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NEW JERSEY REGISTER

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: APRIL 17, 1995
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT MAY 15, 1995

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **July 19, 1995**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

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RULE PROPOSALS

AGRICULTURE

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Acquisition of Development Easements
Criteria for Evaluating Development Easement Applications

Proposed Amendment: N.J.A.C. 2:76-6.16

Authorized By: State Agriculture Development Committee,
Arthur R. Brown, Jr., Chairperson.
Authority: N.J.S.A. 4:1C-5f.
Proposal Number: PRN 1995-364.

Submit comments by July 19, 1995 to:
Donald D. Applegate
State Agriculture Development Board
CN 330
Trenton, New Jersey 08625

Summary

The proposed amendments at N.J.A.C. 2:76-6.16 are intended to improve the current criteria utilized by the State Agriculture Development Committee for ranking applications being considered for development easement purchase.

N.J.A.C. 2:76-6.16(c), the soil quality criterion, will be amended by reducing the weight of the factor from 30 to 15. The proposed amendment at N.J.A.C. 2:76-6.16(d) incorporates a tillable acres criterion with a weight of 15. Priority consideration would be given to farms that have a greater proportion of the land that is deeded tillable. The factors to consider include the percentage of lands devoted to cropland, pasture, orchard/vineyard, nursery or sod production.

The SADC had received comments from the Sussex County Agriculture Development Board that too much emphasis was given to the percentage of prime soils, soils of Statewide importance and other locally important soils. Unfortunately, farms containing a low percentage of prime soils and soils of statewide importance received a lower rank, regardless of whether or not the farm was in production. In response to this concern, the SADC considered reducing the weight given to the soil quality criterion and added a comparable weight of 15 to recognize the percentage of tillable acres. From the SADC's perspective, this provided a more balanced evaluation of the farm's overall productivity.

The proposed amendments at N.J.A.C. 2:76-6.16(g) clarify the relationship of the subject farm to other farms included in a project area. A project area, as defined at N.J.A.C. 2:76-6.2, means an area identified by a board or the SADC which is located within an agricultural development area and is comprised of one or more development easement purchase applications approved by the board and received by the SADC, lands where development easements have already been purchased, other permanently deed restricted farmlands, farmland preservation programs and municipally approved programs. The SADC recognizes that physical features or poorer quality farms may present a problem in obtaining contiguous farm enrollment. For this reason, the word "reasonable" contiguity was inserted in the proposed amendment. For further clarification, reasonable contiguity is referred to as "within one-half mile." Therefore, the evaluation process for establishing density will consider development easement purchase applications, development easements purchased, other permanently deed restricted farmlands, farmland preservation programs and municipally approved programs that are located within one-half mile of each other.

Social Impact

The proposed amendments will have a positive social impact on the county agriculture development boards and the citizens of New Jersey through the permanent retention of productive agricultural lands throughout the State. The retention of agricultural lands not only strengthens the agricultural industry in the State but provides other amenities such as open space, water recharge areas and quality of life.

The proposed amendments will provide a more refined evaluation process for ranking farms being considered for the purchase of development easements. Consideration given to the percentage of tillable soils will be beneficial to those landowners with agricultural lands that may not contain a high percentage of prime soils and soils of statewide importance, but are in agricultural production. In some instances, unique conditions may permit the use of lower quality soils to produce a specialty crop. The proposed amendments will prioritize farms that contain agricultural lands that are superior in soil quality and are tillable. Ultimately, these farms will have a greater potential to be retained in agricultural use and production in the future.

Economic Impact

The proposed amendments will have a varying economic impact on landowners who submit applications to county agriculture development boards for the sale of development easements. In some instances, the proposed amendments may result in a higher ranking for a particular farm. As a consequence, another farm may be ranked lower. Due to a fixed amount of State funding available for each funding round, some farms may not rank high enough to allow the SADC to provide a cost-share grant to the county for the purchase of the development easement on a particular farm. Overall, the criteria used to evaluate the farms will be applied uniformly throughout the State.

Executive Order No. 27 Statement

An Executive Order No. 27 Analysis is not required, since there are no Federal standards which govern the acquisition of development easements. Such easements are governed by N.J.S.A. 4:1C and the rules of the State Agriculture Development Committee.

Regulatory Flexibility Statement

The majority of the land potentially subject to the programs of the State Agriculture Development Committee is owned by small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, in the instances where requirements impact landowners participating in the program, who could be construed as small businesses pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the compliance requirements are not burdensome. Landowners completing easement purchase applications for submission to the county agriculture development boards must include information about the amount of tillable soils on the farm. Generally, the landowner is very familiar with his or her agricultural operation and can readily provide that information to the county.

The evaluation of reasonable contiguity of the subject farm in relation to other farms within the project area is determined by the county agriculture development board. Therefore, the proposed amendments do not impose any unduly burdensome recording, recordkeeping or compliance requirements on the landowners.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

2:76-6.16 Criteria for evaluating development easement applications

(a) (No change.)

(b) The criteria listed in (c), (d), (e), (f), [and] (g), **and (h)** below shall be combined to demonstrate the degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture.

(c) The soil quality criterion (weight [30] **15**) is as follows:

1.-2. (No change.)

(d) The tillable acres criterion (weight 15) is as follows:

1. Priority will be given to the proportion of the land that is deemed tillable.

2. Factors to consider will be lands devoted to cropland, pasture, orchard/vineyard, nursery or sod production.

Recodify existing (d)-(e) as **(e) and (f)** (No change in text.)

[(f)]**(g)** The size and density criterion (weight 20) is as follows:

1. Priority will be given to larger masses with higher density of the lands dedicated to farmland preservation.

2. Factors to be considered are as follows:

i.-ii. (No change.)

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iii. The density of the individual application in relation to the project area. Density shall be recognized as the **reasonable** contiguity, **within one-half mile,** of lands encompassed by development easement purchase applications, development easements purchased, other permanently deed restricted farmlands, farmland preservation programs and municipally approved programs.

Recodify existing (g) and (h) as **(h) and (i)** (No change in text.)

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Mortgage Bankers and Mortgage Brokers
Notice of Termination of Funding
Reproposed New Rule: N.J.A.C. 3:38-1.11
Proposed New Rule: N.J.A.C. 3:38-1.12
Reproposed Amendment: N.J.A.C. 3:38-2.1
Proposed Amendment: N.J.A.C. 3:38-1.1

Authorized By: Elizabeth Randall, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8.1 and 17:11B-13.

Proposal Number: PRN 1995-370.

Submit comments by July 19, 1995 to:
Elaine W. Ballai, Regulatory Officer
Division of Regulatory Affairs
Department of Banking
20 West State Street, CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

In accordance with its statutory mandate to regulate and monitor compliance of licensees in the mortgage banking industry, the Department proposes to require notification to the Department of Banking whenever a lending institution or lending company, which supplies funds to a licensee, terminates its agreement with the licensee. In the past, a number of licensees have ceased business operations or have gone out of business because, among other reasons, the institution or company which had provided funds to the licensee either before or after closing a mortgage transaction, terminated the funding of such loans. The Department learned that its licensee was no longer in business only when loan applicants began to call with complaints. The Department will be in a better position to take prompt action to assist licensees and borrowers if it has immediate knowledge that a licensee may have financial difficulties. The Department's original proposal, published in the New Jersey Register on February 21, 1995 at 27 N.J.R. 611(a) generated a number of comments from the industry, which the Department discussed and determined to address in a reproposal. Commenters offered several suggestions, some of which have been incorporated into the reproposal. These include a clarification of the word "lender" to indicate "wholesale lender," a definition of "funding" and a statement that failure to comply with this subchapter shall not be deemed to provide a party to the transaction with any legal rights or remedies he or she would not otherwise enjoy pursuant to the contractual relationship between the parties. A new section has also been added at N.J.A.C. 3:38-1.12 which requires a licensee to also provide the Department with notice whenever its source of funding is terminated for any reason, and the steps being taken to service consumers in the event an alternate source of funding is not obtained. The proposed amendment to N.J.A.C. 3:38-1.1 provides a definition of "funding." Proposed N.J.A.C. 3:38-1.11 will require that whenever a licensee enters into or renews a funding contract with a lending institution, the contract shall provide that should funding terminate for any reason, immediate written notice be provided by the lender to the Department of Banking. Proposed N.J.A.C. 3:38-1.12 will require that a licensee whose funding is terminated shall notify the Department within three days and supply the Department with information regarding a new source of funds, if any, and specifies that a failure to comply shall not be deemed to provide a party to the transaction with any legal rights or remedies he or she would not otherwise enjoy pursuant to the contractual relationship between the parties. Proposed N.J.A.C. 3:38-2.1(f) requires the licensee to maintain in its records a copy of its contract or agreement with a lender for review by the Department.

Social Impact

Applicants for mortgages generally rely on licensed mortgage lenders to have the financial resources with which to close their mortgage loans. Applicants are sometimes not aware that the mortgage licensee, in many cases, depends on a financial institution such as a bank or lending company to finance these transactions, by means of a warehouse line of credit, table funding or other arrangement. When a mortgage licensee makes a decision to cease its operations, there may be applications pending which involve monies paid by applicants for various fees collected by licensees during the application process. Should the loan not close through no fault of the applicant, such fees must be returned; in the alternative, a supply of funds may be arranged through other lenders to close the loan. By having advance notice from the licensee and from the funding lender that the licensee's source of funds is no longer available, the Department of Banking will be in a position to obtain a list of pending mortgage applications so as to assist in the process of closing loans or taking whatever action is deemed necessary to avoid harm to consumers. In addition to aiding the consumer these proposed amendments and new rules will assist the mortgage banking industry to maintain its fine reputation for financial service to the community.

Economic Impact

Compliance with proposed N.J.A.C. 3:38-1.11 and 1.12 will have a significant positive economic impact in that a mortgage loan applicant will be less likely to suffer monetary damage, should the mortgage banker licensee cease its business operation unexpectedly. The reasons for this benefit are as set forth in the Social Impact statement above. No change in the social or economic impact is anticipated as a result of reproposal of these rules.

Executive Order No. 27 Statement

Real estate settlement procedures and fees are governed by Federal law and regulations, at 12 U.S.C. 2601 et seq. and 24 C.F.R. 3500 et seq. The Federal law and rules, however, are designed to provide protection to the borrower directly, through regulation of disclosure and designation of permissible fees and costs which are permitted to be charged to consumers. The proposed new rules N.J.A.C. 3:38-1.11 and 1.12 have no direct impact on a licensee's transactions with consumers; rather, they require the licensee to provide for notice to the Department of Banking whenever its source of mortgage funding is terminated. This is to be effected through the licensee's contract with its funding institution and by notice from the licensee itself. Therefore, a Federal exceedance analysis is not applicable to these amendments and new rules.

Regulatory Flexibility Analysis

The proposed amendments and new rules will result in minimal costs to small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because the notice requirement established herein may be satisfied with a short letter from the licensee's funding institution or funding company pursuant to its contract with the licensee. Such lenders are not small businesses. The requirement that a licensee shall also notify the Department when its funding arrangements are changed or terminated applies to all licensees. No differentiation is made based on the licensee's size; rather it is the use of other lenders which triggers the reporting requirement. The proposed amendment to N.J.A.C. 3:38-2.1 merely requires a licensee to maintain a copy of its funding institution/company agreement, and should not, therefore, increase a licensee's capital costs. The Department's reproposal of this rule does not alter the effect on small businesses as set forth above.

Full text of the proposal follows (additions indicated in boldface **thus**):

3:38-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

. . .

"Funding" as used in the phrase "termination of funding" means an agreement between a wholesale lender and a licensee whereby the wholesale lender provides funds for the licensee's mortgage closings.

. . .

3:38-1.11 Notice of termination of funding

(a) A licensee who enters into or renews a contractual arrangement with a lending institution or lending company for mortgage closing funds shall include in every contract and in every contract renewal form the following clause:

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Lender (funding institution or company) hereby agrees that in the event lender terminates funding Licensee at any time and for any reason, Lender will provide written notice of said termination of funding to the Department of Banking, 20 West State Street, CN 040, Trenton, N.J. 08625, Attention: Licensee Examination Unit, by certified mail, return receipt requested. Said notice shall be sent to the Department of Banking prior to or simultaneously with Lender's notice of termination to Licensee.

(b) A failure to comply with this subchapter shall not be deemed to provide a party to the transaction with any legal rights or remedies he or she would not otherwise enjoy pursuant to the contractual relationship between the parties.

3:38-1.12 Licensee's notice

(a) A licensee whose funding arrangement with a lender has terminated for any reason shall notify the Department in writing within three business days. In addition, the licensee shall advise the Department whether the licensee has entered into a funding arrangement with another lender, and shall provide the Department with the name and address of that lender.

(b) If the licensee has not entered into a new funding arrangement, the licensee shall advise the Department regarding the steps being taken to service consumers whose applications are pending.

3:38-2.1 Methods and accounting

(a)-(e) (No change.)

(f) Each licensee shall maintain in its files a copy of its agreement(s), if any, with a funding institution or funding company which provides mortgage closing funds to the licensee. Said agreement shall comply with the requirements of N.J.A.C. 3:38-1.11.

COMMUNITY AFFAIRS

(a)

DIVISION ON AGING

Adult Protective Services

Proposed New Rules: N.J.A.C. 5:72

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27d-423.

Proposal Number: PRN 1995-316.

Submit written comments by July 19, 1995 to:

Elga Mercer, MSW
Supervisor, Office of Planning, Advocacy and Protection
Department of Community Affairs
Division on Aging
CN 807
Trenton, NJ 08625
FAX No. (609) 633-6609

The agency proposal follows:

Summary

The Adult Protective Services Program was transferred to the Department of Community Affairs from the Department of Human Services pursuant to the Adult Protective Services Act, P.L. 1993, c.249, N.J.S.A. 52:27D-406 et seq. The purpose of the Adult Protective Services Program is to provide protective services to mentally or physically disabled adults who are subject to abuse, neglect, self-neglect, or exploitation. The Program is administered by the Department's Division on Aging and is implemented locally by county adult protective services provider agencies. The Program is funded by a combination of State, Federal and county monies, which total about $5 million. The Division allocates State funds on the basis of a formula which considers age, disability, poverty level, and the number of referrals. Federal and county funds are also utilized by adult protective services providers at the local level to implement the program.

The program serves people who lack the capacity to understand or manage their circumstances because of a physical or mental disability. Trained adult protective services workers in each county respond to reports of abuse, neglect or exploitation by making a personal visit to the vulnerable adult, and, if the report is substantiated, by arranging necessary interventions to reduce the risk of harm. Because problems of abuse, neglect and exploitation occur at every economic level, there are no financial eligibility criteria for evaluation and home visits by adult protective services workers. Every effort is made to maintain people in their own homes. Unless there is an imminent danger to the vulnerable adult, acceptance of proposed interventions by the vulnerable adult or his or her caregiver is voluntary.

The Adult Protective Services Act also provides civil and criminal immunity for people who make reports of suspected abuse, neglect or exploitation in good faith; requires that an evaluation of each report begin within 72 hours; and establishes various legal mechanisms for protecting vulnerable adults short of guardianship.

The following is a summary of the chapter.

Subchapter 1 contains the general provisions for the rules and is comprised of the following:

N.J.A.C. 5:72-1.1 states the purpose of the Adult Protective Services Act, P.L. 1993, c.249, N.J.S.A. 52:27D-406 et seq., and places responsibility for its implementation in the Department of Community Affairs. The Department is charged with maintaining a central registry of clients.

N.J.A.C. 5:72-1.2 defines the words and phrases deemed essential to establishing the operative intent of this subchapter.

N.J.A.C. 5:72-1.3 identifies the guiding principles of Adult Protective Services, noting that these services are voluntary unless ordered by the court.

Subchapter 2 describes the responsibilities of the Department of Community Affairs and the Division on Aging as follows:

N.J.A.C. 5:72-2.1 provides for the Commissioner to report annually to the Governor and the Legislature, with recommendations for the prevention and alleviation of abuse, neglect and exploitation of vulnerable adults.

N.J.A.C. 5:72-2.2 provides that the Commissioner delegates the Adult Protective Services Program to the Division on Aging.

N.J.A.C. 5:72-2.3 provides for the Division to approve the public or nonprofit agency designated by a county as a county adult protective services provider.

N.J.A.C. 5:72-2.4 provides that the Division develop policies and procedures to implement the Adult Protective Services Program in a proper, efficient and effective manner.

N.J.A.C. 5:72-2.5 provides that funds for the Adult Protective Services Program shall be distributed by the Division on Aging according to specified criteria, consisting of the geographic distribution of elderly persons, adults with physical and mental illnesses, disabilities or deficiencies.

N.J.A.C. 5:72-2.6 specifies the conditions governing the contracting process.

N.J.A.C. 5:72-2.7 provides that a central registry be established by the Division, containing all reports of suspected abuse, neglect and exploitation of vulnerable adults.

N.J.A.C. 5:72-2.8 provides that all records and communications pertaining to any report, evaluation or services provided to the Division be kept confidential unless disclosure is necessary for the provider to perform its duties or as directed by a court of competent jurisdiction.

N.J.A.C. 5:72-2.9 provides that the Division evaluate county adult protective services providers at least annually in order to assess the provider's ability, effectiveness and compliance with program requirements and to delineate any necessary program improvements.

N.J.A.C. 5:72-2.10 provides the procedures for the Division in responding to complaints about the Adult Protective Services Program.

N.J.A.C. 5:72-2.11 provides that the Division develop training requirements for adult protective services workers consisting of at least 90 classroom hours to be offered to new staff at least once a year and a minimum of 18 hours for supervisory training.

N.J.A.C. 5:72-2.12 provides for the Commissioner to establish a comprehensive public awareness program, including the establishment of an "Adult Protective Services Public Awareness Task Force," to inform the public and social services agencies on abuse, neglect, exploitation and services available for vulnerable adults.

Subchapter 3 describes the responsibility of the county adult protective services provider and includes the following:

N.J.A.C. 5:72-3.1 assigns the responsibility for implementing the requirements set forth by the Chapter pertinent to the Adult Protective Services Act to the county director.

N.J.A.C. 5:72-3.2 lists the required services for a county adult protective services providers, including providing voluntary or court-ordered social,

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legal, financial, medical or psychiatric services necessary to safeguard a vulnerable adult's rights and resources.

N.J.A.C. 5:72-3.3 permits flexibility for county adult protective services providers when needed to allow for an individualized response.

N.J.A.C. 5:72-3.4 stipulates that county adult protective services providers provide access to information necessary for monitoring by the Division.

N.J.A.C. 5:72-3.5 explains the reporting requirements for county adult protective services providers and stipulates the forms to be used.

N.J.A.C. 5:72-3.6 provides the staff requirements for county adult protective services providers that include a graduate with a Master's or bachelor's degree in social work or a registered nurse from an accredited institution and the completion of a 90-hour mandatory basic training program offered by the Division.

N.J.A.C. 5:72-3.7 sets forth the confidentiality requirements imposed on the county adult protective services providers pursuant to the Adult Protective Services Act, and the exceptions under which information may be released.

N.J.A.C. 5:72-3.8 requires the retention of records by county adult protective services providers for a minimum of three years after a case has been closed.

N.J.A.C. 5:72-3.9 describes the conditions under which vulnerable adults may be interviewed for public information or research.

N.J.A.C. 5:72-3.10 requires that county adult protective services providers maintain liability insurance to cover the agency and all staff involved in the provision of services.

N.J.A.C. 5:72-3.11 describes the fiscal and audit requirements that must be maintained by the county adult protective services providers and stipulates the forms that must be used.

N.J.A.C. 5:72-3.12 requires county adult protective services providers to establish and maintain written procedures for receiving, evaluating and responding to complaints.

Subchapter 4 describes eligibility requirements and includes the following:

N.J.A.C. 5:72-4.1 defines "vulnerable adult" as a person 18 years of age or older residing in a community setting lacking sufficient understanding or capacity to make, communicate, or carry out decisions concerning his or her well-being because of a physical or mental illness, disability or deficiency; and is the subject of abuse, neglect or exploitation.

N.J.A.C. 5:72-4.2 describes certain nonmedical remedial treatment as not being deemed to be abuse, neglect or exploitation.

N.J.A.C. 5:72-4.3 states that there is no financial eligibility requirement for an evaluation and visits by a county adult protective services worker.

Subchapter 5 describes screening and consists of the following:

N.J.A.C. 5:72-5.1 describes that any person who has reasonable cause to believe that a vulnerable adult is the subject of abuse, neglect or exploitation, may report the information to the county adult protective services provider.

N.J.A.C. 5:72-5.2 contains the information to be included in reporting a case of abuse, neglect or exploitation of a vulnerable adult.

N.J.A.C. 5:72-5.3 provides immunity from criminal and civil liability to persons who report information concerning the abuse of a vulnerable adult.

N.J.A.C. 5:72-5.4 prohibits retaliation against any person who files a report of abuse, neglect or exploitation by an employer or any other person. Violations are subject to a fine up to $1,000.

N.J.A.C. 5:72-5.5 requires that county adult protective services providers provide access for reporting of abuse, neglect or exploitation. Anonymous reports are acceptable. If a court order, however, is obtained by a third party to reveal the source of a report, anonymity may not be possible.

N.J.A.C. 5:72-5.6 includes the process of screening and the information that should be obtained from the person making a report.

N.J.A.C. 5:72-5.7 specifies the role of the county adult protective services provider in screening, and provides that reports for evaluation are assigned within one working day of receipt.

Subchapter 6 provides for the evaluation of reports and includes the following:

N.J.A.C. 5:72-6.1 provides for the personal evaluation of an alleged report of abuse and its validity and whether immediate intervention is necessary.

N.J.A.C. 5:72-6.2 indicates the time frames for an evaluation of a report and how to document unsuccessful attempts to make a face-to-face contact.

N.J.A.C. 5:72-6.3 explains the process for conducting an evaluation and the forms to be used.

N.J.A.C. 5:72-6.4 provides immunity from civil and criminal liability for county adult protective services providers and their employees.

N.J.A.C. 5:72-6.5 discusses the procedure for accessing records necessary to complete an evaluation, including the use of court orders.

N.J.A.C. 5:72-6.6 explains the procedure for an adult protective services worker when making an announced or unannounced visit in order to conduct an evaluation.

N.J.A.C. 5:72-6.7 provides for an adult protective services worker to obtain information necessary for an evaluation without the subject's consent.

Subchapter 7 includes provisions for protective services and includes the following:

N.J.A.C. 5:72-7.1 states that when a report of abuse, neglect or exploitation is substantiated, the county adult protective services provider shall, with the consent of the vulnerable adult or his or her legal guardian, provide or arrange for appropriate protective services and follow up on referrals to determine whether services are being provided.

N.J.A.C. 5:72-7.2 requires the Division of Developmental Disabilities and the Division of Mental Health and Hospitals to give priority to referrals from the county adult protective services provider.

N.J.A.C. 5:72-7.3 stipulates that a county adult protective services worker visit a vulnerable adult at least monthly, but that the supervisor shall determine the frequency necessary to insure that service needs are met.

N.J.A.C. 5:72-7.4 requires that a care plan including a statement of the problem, the vulnerable adult's perception of the problem and desired outcome, and interventions planned be prepared within 30 days after accepting the report.

N.J.A.C. 5:72-7.5 requires that dated case notes begin with the day the report is received and include documentation of dates of contact, summarizes activities, events and changes in the vulnerable adult's situation and contacts with other agencies, family members or involved persons.

N.J.A.C. 5:72-7.6 indicates that a case is closed when a vulnerable adult is no longer in need of protective services and specifies the form to be used.

N.J.A.C. 5:72-7.7 describes the procedure for transferring a case to another county in New Jersey. If it is in the best interests of the vulnerable adult and both providers agree, the original provider may continue without transferring the case.

N.J.A.C. 5:72-7.8 explains that when a reported incident occurs in a county other than the county of residence of the vulnerable adult, the provider in the county where the incident occurred shall evaluate the report, unless both counties concerned decide otherwise. Upon request of the county of residence, the referral and progress notes of a substantiated report is forwarded to that county.

N.J.A.C. 5:72-7.9 provides that when a vulnerable adult is still in need of services and moves out of New Jersey, the county adult protective services provider makes a referral to the state of relocation and shares case information, if the out-of-state agency maintains a similar policy of confidentiality.

N.J.A.C. 5:72-7.10 requires that the county adult protective services supervisor guide, support, and direct the worker. The supervisor also will sign and date case records, assign cases and caseloads, schedule coverage, accompany workers on field visits when necessary, and review allegations of criminal conduct regarding vulnerable adults for possible referral to law enforcement agencies.

Subchapter 8 describes critical incident reporting and includes the following:

N.J.A.C. 5:72-8.1 defines a critical incident as follows: any suspicious death or serious injury of a vulnerable adult under supervision; any program-related confirmed or suspected criminal activity by a protective services worker; civil, criminal or legal actions against the provider; death or serious injury of a provider staff member; or situations which might involve hostile or controversial media coverage.

N.J.A.C. 5:72-8.2 requires that the State coordinator be informed of any critical incident by telephone within two working days, followed by a written report within five working days of the incident, and stipulates the form to be used.

N.J.A.C. 5:72-8.3 requires that the adult protective services agency director report any caretaker or other person who has committed a criminal act against a vulnerable adult to local law enforcement officials. If made orally, a written report shall follow within three working days.

Subchapter 9 describes the provision of involuntary services as follows:

N.J.A.C. 5:72-9.1 states that the county adult protective services provider may petition a court of competent jurisdiction for an order to conduct an evaluation if access to the vulnerable adult is prevented.

N.J.A.C. 5:72-9.2 explains the procedure for the county adult protective services provider or other concerned person for petitioning a court of competent jurisdiction to prevent a vulnerable adult's caretaker or other person from interfering with the provision of services, stipulating the need for

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services for which the adult or his or her guardian consents and that interference has occurred.

N.J.A.C. 5:72-9.3 describes the procedure for the county adult protective services provider to access records of public and private organizations, including medical and financial institutions, necessary to complete an evaluation, by a written request to the appropriate agency, and if unsuccessful, by petitioning a court of competent jurisdiction.

N.J.A.C. 5:72-9.4 describes the procedure for a provider to petition a court of competent jurisdiction for emergency protective services when the provider determines that there is a clear and substantial risk to the vulnerable adult of death or irreparable injury and the adult refuses or is unable to consent to the services, including the facts to be presented and the measures to ensure the participation of the adult and other interested parties at the hearing. An emergency order entered by the court may not exceed 72 hours unless a continuation is granted.

N.J.A.C. 5:72-9.5 describes the procedure for a provider to petition a court of competent jurisdiction for non-emergency protective services when the provider determines the adult will incur a substantial risk of physical harm or deterioration, including the facts to be presented and the measures to ensure the participation of the adult and other interested parties at the hearing. A non-emergency protective services order may not exceed 30 days unless one additional 30-day period is granted.

N.J.A.C. 5:72-9.6 states that no permanent change in the living situation of abused, neglected or exploited adults shall be made under the Adult Protective Services Act, and where such change is necessary, the appropriate guardianship, conservatorship or civil commitment action shall be initiated by the provider.

N.J.A.C. 5:72-9.7 states that the vulnerable adult or those responsible for providing protective services for the adult have the right to move for review of a court order pursuant to this Act despite a court finding of a lack of capacity to consent to protective services.

N.J.A.C. 5:72-9.8 specifies that the court may order payments to be made for protective services from the estate of a vulnerable adult.

Subchapter 10 contains the responsibilities concerning financial management as follows:

N.J.A.C. 5:72-10.1 describes the procedure for ensuring accountability of the county adult protective services provider if acting as representative payee, legal custodian of veterans benefits, financial guardian, conservator or power of attorney.

N.J.A.C. 5:72-10.2 explains the procedures to ensure accountability which shall be followed when the county adult services provider informally assists the vulnerable adult in handling routine financial matters, such as cashing checks, making cash purchases, making deposits and withdrawals, helping with financial records, explaining bills or preparing checks for signature by the adult.

Subchapter 11 provides guidelines concerning guardianship and conservatorship as follows:

N.J.A.C. 5:72-11.1 explains that the county adult services provider may petition for guardianship, seeking the most limited authority necessary, when the provider believes that the adult who is subject to abuse, neglect or exploitation cannot be protected with less intrusive measures and no other appropriate persons are willing to file. The provider may petition for conservatorship only for competent adults who give consent.

N.J.A.C. 5:72-11.2 stipulates that when the county adult protective services provider recommends the appointment of the Public Guardian to act for a vulnerable adult, the worker shall forward a short summary to the Director of Social Work in the Office of the Public Guardian, using the designated form, and provide other assistance as requested.

Appendices A through P contain the forms necessary for the implementation of the Adult Protective Services Program.

Social Impact

The Adult Protective Services (APS) Program was transferred to the Department of Community Affairs from the Department of Human Services pursuant to the Adult Protective Services Act, P.L. 1993, c.249, N.J.S.A. 52:27D-406 et seq. This transfer was effected because over 85 percent of the adults served are over the age of 60 and the Division on Aging within the Department of Community Affairs has a Federal mandate to support elder abuse programs. The Department of Community Affairs has continued the administrative structure established by the Department of Human Services and maintained the same local agencies to provide services. Designated providers formerly under the Department of Human Services and now under contract with the Department of Community Affairs, include 14 County Welfare Agencies, three County Offices on Aging, and four private non-profit agencies.

The proposed new rules will have a positive social impact on individuals served by APS by establishing consistent standards for receiving and responding to reports under the Adult Protective Services Act. The purpose of the Adult Protective Services Program is to provide protective services to mentally or physically disabled adults who are subject to abuse, neglect, or exploitation. The program serves people who cannot protect themselves from harm as a result of their disabilities. Because problems of abuse, neglect and exploitation occur at every economic level, there are no financial eligibility criteria for evaluation and home visits by adult protective services workers.

The individuals who will benefit from APS include approximately 4,700 adults who are anticipated to be reported to APS in 1995 and approximately 3,196 adults whose abuse, neglect, or exploitation is expected to be substantiated. Conservative national estimates indicate that 1 percent of adults over 60 may be abused, neglected or exploited. In New Jersey, this constitutes a potential population of 14,000 older adults needing protective services. The number of reports of suspected abuse, neglect and exploitation of adults with disabilities under the age of 60 anticipated for 1995 is approximately 600. The incidence of abuse, neglect and exploitation has been less studied in this population and it is more difficult to anticipate potential need. It is believed that many more adults with disabilities need protective services than are actually reported.

A trained APS worker in each county responds to reports of abuse, neglect or exploitation by visiting vulnerable adults at home and evaluating their circumstances. If a report is substantiated, the APS worker works with the adult to plan for his or her safety and arranges for needed services to reduce the risk of harm. A variety of social, medical, legal and financial services are provided or arranged for by APS workers. Some examples of services are: homemaker/home health services, chore services; arranging for needed medical care; providing emergency food and clothing; accessing benefit and entitlement programs; arranging for representative payees; and using legal interventions. Every effort is made to honor the wishes of vulnerable adults and maintain them in their own homes. In a small percentage of cases, involuntary services are provided either under court order or through the appointment of a guardian.

Economic Impact

The Adult Protective Services Act and these rules expand the responsibilities of county APS provider agencies. It is expected that there will be increases in the number of persons served and that there will be increased costs for use of court orders for involuntary services. Additional funds in the amount of $480,000 Statewide were distributed by the Department of Community Affairs, effective January 1, 1995, to help county APS providers meet these additional requirements.

The Department of Community Affairs supervises the Adult Protective Services Program and allocates State funds. A formula which considers county populations for age, disability, poverty level, and number of reports received was used to allocate $2.3 million in casino revenue funds when APS was transferred from the Department of Human Services and safe housing funds. Additional funding at the county level consists of $1.5 million in county funds, $1.1 million in Social Services Block Grant funds, $389,000 in State Peer Grouping funds, and $133,000 in Older Americans Act funds for a total of $3.1 million from local sources. Statewide APS program spending totals approximately $6 million dollars.

Services recommended as a result of substantiation of a report, such as homemaker/home health aide or chore services, are often provided under other publicly funded programs, such as Medicare, Medicaid and the Older Americans Act. The proposed new rules do not impose any additional impact on these publicly funded programs as must vulnerable adults already qualify in terms of eligibility. Individuals who can afford to pay for their own protective services are asked to do so. If services are ordered for an individual as a result of court order, the adult may be asked to pay for needed services by the court. Any burden that these costs impose on the individual should be offset by improvements in his or her safety, health, or general quality of life.

The amount to be spent on services per client per county follows:

Atlantic	$ 884
Bergen	$1,898
Burlington	$1,860
Camden	$2,861
Cape May	$1,148
Cumberland	$ 994
Essex	$ 815
Gloucester	$1,509

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Hudson	$ 871
Hunterdon	$ 526
Mercer	$1,294
Middlesex	$1,025
Monmouth	$ 971
Morris	$1,296
Ocean	$1,321
Passaic	$1,318
Salem	$ 790
Somerset	$2,371
Sussex	$1,826
Union	$1,694
Warren	$1,068

Executive Order No. 27 (1994) Analysis

Chapter three of Title VII of the Older Americans Act concerns confidentiality of information received by an Elder Abuse program in responding to a report. Title VII allows the release of information if all parties involved have signed a written consent or if the release is made to law enforcement, a public licensing agency, a protection and advocacy system, or the Ombudsman or under court order. The proposed new rules exceed Title VII in that information gathered in responding to a report is only released to other parties under court order or if the sharing of information is necessary to arrange services for the vulnerable adult. The higher standard is being proposed in New Jersey, in order to further strengthen the confidentiality and anonymity rights of persons who make reports under the Adult Protective Services Act. It is estimated that an individual seeking a court order for access to records would incur a cost of about $700.00 for consultation with an attorney and for filing fees. This higher standard and cost is justified by the protection provided to all involved parties through judicial review of the need for access to the information.

Regulatory Flexibility Analysis

Seventeen of the 21 county adult protective services providers are public entities, while four providers are private non-profit agencies, and thus fall into the category of "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All four of the private non-profit providers are voluntarily contracting with the Department of Community Affairs. The proposed reporting and recordkeeping requirements do not impose an additional burden on these agencies.

The Commissioner is responsible for establishing a central registry to identify and maintain a record of all reports of suspected abuse, neglect and exploitation of vulnerable adults and to ensure proper disposition of such reports by the county agencies which the Department has designated to protect such individuals. The proposed rules impose reporting, recordkeeping and other compliance requirements on all county protective service providers, both public and private. For example, the proposed new rules require that county adult protective services providers submit monthly registry forms, quarterly expenditure and program reports, and other fiscal and program information deemed necessary by the Division for maintaining accountability. Furthermore, county adult protective services providers must also maintain confidential records pertaining to reports of abuse, exploitation or neglect of a vulnerable adult for a minimum of three years after the case is closed. Both public and private county adult protective services providers are expected to cover the costs of complying with these requirements with funds provided by the Department. All providers, both public and private non-profit, will have to comply with the requirements of these rules in using outside professional services such as psychiatrists, home care agencies, chore services, nursing services, and others. The four private non-profit agencies and some of the public agencies may also have to employ the use of accountants for fiscal audits and attorneys for the legal services required.

The Department does not believe that different reporting, recordkeeping and compliance requirements are feasible, given the sensitive nature of a program designed to protect vulnerable adults from abuse, neglect or exploitation while maintaining the privacy of such individuals.

Full text of the proposed new rules follows:

CHAPTER 72
ADULT PROTECTIVE SERVICES (APS) PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

5:72-1.1 Purpose

This chapter implements the Adult Protective Services Act, P.L. 1993, c.249, N.J.S.A. 52:27D-406 et seq., which establishes a Statewide program to help abused, neglected and exploited adults who are unable to protect themselves. The Department of Community Affairs is charged with the responsibility of establishing a State supervised and county administered program to respond promptly to reports of abuse, neglect, or exploitation and to provide protective services to those adults who need them. The Commissioner is responsible for establishing a central registry to identify and maintain a record of all persons alleged to be abused, neglected, and exploited and to ensure proper disposition by the county agencies which the Department has designated to protect these individuals.

5:72-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Abuse" means the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation of services which are necessary to maintain a person's physical and mental health.

"Caretaker" means a person who has assumed responsibility for the care of a vulnerable adult as a result of family relationship or who has assumed responsibility for the care of a vulnerable adult voluntarily, by contract, or by order of a court of competent jurisdiction, whether or not such person resides with the vulnerable adult.

"Commissioner" means the Commissioner of Community Affairs.

"Community setting" means a private residence or any noninstitutional setting in which a person may reside alone or with others, but shall not include nursing homes, residential health care facilities, rooming houses, boarding homes or any other facility or living arrangement subject to licensure by, operated by, or under contract with, a State department or agency.

"County adult protective services provider" means a county board of social services or other public or nonprofit agency with experience as a New Jersey provider of protective services for adults, designated by the county and approved by the Commissioner. The county adult protective services provider receives reports made pursuant to the Adult Protective Services Act P.L. 1993, c.249, N.J.S.A. 52:27D-406 et seq. and maintains pertinent records and provides, arranges, or recommends protective services.

"County adult protective services screening" means a function performed by a staff person designated by the county director to receive reports made under the Adult Protective Services Act, obtain pertinent information from the person making the report, and determine whether the situation reported meets eligibility criteria.

"County adult protective services supervisor" means a supervisor designated responsible for overseeing and directing county adult protective services workers. Adult protective services workers include professional staff, such as social workers, nurses, intake workers and others, and clerical support staff.

"County director" means the director of a county adult protective services provider.

"Department" means the Department of Community Affairs.

"Division" means the Division on Aging in the Department of Community Affairs.

"Exploitation" means the act or process of illegally or improperly using a person or his or her resources for another person's profit or advantage.

"Neglect" means an act or failure to act by a vulnerable adult or his or her caretaker which results in the inadequate provision of care or services necessary to maintain the physical and mental health of the vulnerable adult, and which places the vulnerable adult in a situation which can result in serious injury or which is life-threatening.

"Protective services" means voluntary or court-ordered social, legal, financial, medical or psychiatric services necessary to safeguard a vulnerable adult's rights and resources and to protect a vulnerable adult from abuse, neglect or exploitation. Protective services include, but are not limited to: evaluating the need for services, providing or arranging for appropriate services, obtaining financial benefits to which a person is entitled, and arranging for guardianship and other legal actions.

"Sexual abuse" means any activity with a vulnerable adult for the purposes of sexual stimulation of the actor or another person when the vulnerable adult does not consent, or when the vulnerable adult is

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incapable of resisting, giving, or declining consent to the sexual activity due to disability or due to fear of retribution or hardship.

"Substantiation of a report" means that the preponderance of evidence (51 percent or more) gathered during the evaluation of the report supports the allegation that abuse, neglect or exploitation has occurred.

"Vulnerable adult" means a person 18 years of age or older who resides in a community setting and who, because of a physical or mental illness, disability or deficiency, lacks sufficient understanding or capacity to make, communicate, or carry out decisions concerning his or her well-being and is the subject of abuse, neglect or exploitation. A person shall not be deemed to be the subject of abuse, neglect or exploitation or in need of protective services for the sole reason that the person is being furnished nonmedical remedial treatment by spiritual means through prayer alone or in accordance with a recognized religious method of healing in lieu of medical treatment, and in accordance with the tenets and practices of the person's established religious tradition.

5:72-1.3 Principles of adult protective services

(a) The following principles shall guide the provision of adult protective services:

1. Each vulnerable adult's right to privacy shall be respected;
2. In planning for and providing adult protective services, every effort shall be made to determine and respect the vulnerable adult's wishes and preferences regarding the outcome of his or her situation;
3. The least restrictive alternative to meet the vulnerable adult's needs shall guide service provision;
4. All services shall be provided on a voluntary basis unless ordered by a court; and
5. Petitions to the court for involuntary service provision shall only be filed after all voluntary alternatives for protection have been explored.

SUBCHAPTER 2. DEPARTMENT AND DIVISION RESPONSIBILITIES

5:72-2.1 Annual reports to the Governor and the Legislature

The Commissioner shall report annually to the Governor and the Legislature on the effectiveness of the Adult Protective Services Act and make recommendations for the prevention and alleviation of the abuse, neglect and exploitation of vulnerable adults.

5:72-2.2 Delegation within the Department

The Commissioner delegates the responsibility for implementing, monitoring, and supervising the Adult Protective Services Program to the Division on Aging.

5:72-2.3 Approval of county adult protective services providers

The Division shall approve a county board of social services or other public or nonprofit agency designated by the county as a county adult protective services provider. Priority consideration shall be given to agencies which have experience in the provision of adult protective services.

5:72-2.4 Development of policy and procedure

The Division shall develop policies and procedures to implement the Adult Protective Services Act and shall review and update such policies and procedures periodically as necessary to ensure the proper, efficient and effective provision of adult protective services.

5:72-2.5 Funding allocation

In allocating funds made available to the Adult Protective Services Program, the Division shall consider the geographic distribution of elderly persons, the geographic distribution of adults with physical and mental illnesses, disabilities or deficiencies, the demonstrated capacity of the county adult protective services provider to use funds effectively, and other factors which may be considered important in ensuring the availability of protective services Statewide.

5:72-2.6 Contracting

(a) The Division shall contract with a designated county adult protective services provider in each county in order to carry out the provisions of these rules and maintain fiscal accountability for funds allocated for this purpose by the State or Federal government.

(b) The Division may reallocate any funds not spent by a county adult protective services provider during a contract period.

(c) The Division may terminate or not renew funding to a county adult protective services provider when such provider does not meet the requirements of the Adult Protective Services Act, this chapter or the requirements of any contract between the provider and the Division. The Division shall provide written notice of termination or a determination not to renew a contract.

5:72-2.7 Central registry

(a) The Division shall establish a central registry for the receipt and maintenance of all reports of suspected abuse, neglect, and exploitation of vulnerable adults. The Division shall compile and maintain in the central registry demographic data on vulnerable adults, Statewide statistics related to abuse, neglect and exploitation and other information submitted by county adult protective services providers.

(b) The Division shall maintain the names and addresses of all persons reported as subject to abuse, neglect or exploitation, the ages and living arrangements of the subjects of reports, the nature of their disability, the services provided, the type of mistreatment most prevalent, and any other information necessary for the Division to evaluate the needs of vulnerable adults and the performance of the county adult protective services provider in responding to those needs.

5:72-2.8 Confidentiality

(a) All records and communications pertaining to any report, evaluation, or service which are provided to the Division pursuant to the Adult Protective Services Act, P.L. 1993, c.249, N.J.S.A. 52:27D-406 et seq. shall be confidential. All third party information, together with the identity of reporters, witnesses and the adults allegedly in need of protective services are confidential, except disclosures which may be necessary for the Commissioner or the county adult protective services provider to perform its duties and to support any findings that may result from the evaluation of a report. All Division staff, aides, volunteers and students shall maintain confidentiality in all matters pertaining to the Adult Protective Services program. Information may be released only when:

1. The disclosure of information is necessary for the Division or the adult protective services provider to perform its responsibilities as set forth in this chapter; or
2. A court of competent jurisdiction directs disclosure.

5:72-2.9 Evaluation of county adult protective services providers

(a) The Division shall evaluate each county adult protective services provider as needed, but at least annually in order to assess program effectiveness and compliance with the requirements set forth in this chapter.

(b) The performance evaluation shall identify the county adult protective services provider's ability to render required services, identify strengths and weaknesses, and delineate any program improvements necessary to ensure a high quality of service provision.

(c) Performance evaluation is an ongoing process and may consist of site visits, review of program reports and records, interviews with vulnerable adults served by the county adult protective services provider, contact with other agencies and individuals who make referrals, and interviews with county adult protective services staff.

(d) The results of evaluations shall be shared with the county adult protective services providers by Division staff in a timely manner. Results of written evaluations shall be shared with the county adult protective services provider within 30 days after the evaluation is completed.

5:72-2.10 Complaints

(a) The Division shall respond to complaints referred to it about the functioning of the Adult Protective Services program. Procedures for evaluating and responding may include:

1. Contact with the person making the complaint;
2. Contact with the county adult protective services provider to request information or records, as appropriate; and/or
3. A written response to the person making the complaint with a copy to the county adult protective services provider.

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5:72-2.11 Training

(a) The Division shall develop and periodically update a core curriculum of basic knowledge and skills training for county adult protective services workers. Basic knowledge and skills training shall consist of at least 90 classroom hours and be offered at least once every year to new staff assigned to the program.

(b) A minimum of 18 hours of supervisory training shall be offered to county adult protective services supervisors annually by the Division to support the supervisors' role in ensuring service quality.

(c) The Division shall assess the training needs of county adult protective services workers and supervisors annually to identify areas needing further development.

5:72-2.12 Public awareness

(a) The Commissioner shall establish a comprehensive public awareness program to inform the general public and social service agencies as to the nature of abuse, neglect, and exploitation, the method for their reporting, and information about the protective services available for vulnerable adults who need them.

(b) The comprehensive public awareness program shall be a collaborative effort with existing public awareness and training efforts, including those mandated under the "Prevention of Domestic Violence Act of 1991," P.L. 1991, c.261 (N.J.S.A. 2C:25-17 et seq.), the Safe Housing and Transportation program and the "Older Americans Act of 1965," P.L. 89-73 (42 U.S.C. §3001 et seq.).

(c) The Department shall establish an "APS Public Awareness Task Force" to facilitate the collaboration required for the public awareness program and to develop initiatives. The Task Force shall meet at least quarterly and shall include, but not be limited to, a representative from each of the following: the Department of Human Services, the Department of Community Affairs, the Administrative Office of the Courts, an agency funded to administer training initiatives under this Act, an agency funded to administer training initiatives under the "Older Americans Act of 1965," an agency that delivers protective services and the New Jersey Association of Area Agencies on Aging.

SUBCHAPTER 3. COUNTY ADULT PROTECTIVE SERVICES PROVIDER RESPONSIBILITIES

5:72-3.1 Applicability

The county director shall ensure that the requirements set forth in these rules are met, that the provider complies with the contract with the Division on Aging, and that the provisions of this chapter be applied to all adult protective services activities carried out by the county adult protective services provider, regardless of funding source.

5:72-3.2 Required services

(a) County adult protective services providers shall provide or arrange for voluntary or court-ordered social, legal, financial, medical or psychiatric services necessary to safeguard a vulnerable adult's rights and resources, and to protect a vulnerable adult from abuse, neglect or exploitation. Protective services shall include, but not be limited to: evaluating the need for services, providing or arranging for appropriate services, obtaining financial benefits to which a person is entitled, and arranging for guardianship and other legal actions.

(b) The county adult protective services provider shall maintain a minimum working day of seven hours in order to receive reports of abuse, neglect or exploitation, except on weekends and holidays.

(c) Reports shall be evaluated by a county adult protective services worker directly and may not be evaluated through a subcontract or other form of arrangement with another agency, unless the Director of the Division on Aging has granted an exemption from this requirement. Exemptions shall be considered on the basis of greater effectiveness, reduced cost, and the ability of the county adult protective services provider to ensure accountability and confidentiality. Exemptions shall be applied for by writing to the Director of the New Jersey Division on Aging, CN 807, Trenton, New Jersey 08625-0807.

5:72-3.3 Local discretion

The rules contained in this chapter provide direction and guidance to county adult protective services providers in carrying out their responsibilities under the Adult Protective Services Act. It is recognized that rules for screening, evaluating, and providing services need to be flexible in certain circumstances in order to allow for an individualized response. For this reason, a county director or his or her designee shall, at his or her discretion, authorize exceptions to these rules regarding screening, evaluation, and providing services when it is determined to be in the best interests of a vulnerable adult, unless such actions are prohibited by law. The county director or his or her designee shall insure that the exception made and the reasons for it are documented in the case record.

5:72-3.4 Access for monitoring by the Division

The county adult protective services provider shall provide timely access to all files, materials, and records reasonably related to compliance with the requirements contained in this chapter to Division representatives performing their monitoring responsibilities. Timely access means notice of at least two days under routine monitoring procedures, or, in the event of a serious problem, immediately upon request.

5:72-3.5 Client registry

The county adult protective services supervisor shall submit to the State Coordinator, Adult Protective Services Program, NJ Division on Aging, CN 807, Trenton, NJ 08625-0807, a completed Client Registration Form (APS-2) for each report accepted within 30 days following the end of the month in which the report was received. A completed Client Termination Form (APS-3) shall be submitted to the State Coordinator, at the address noted in N.J.A.C. 5:72-3.2(c), for each client accepted for services within 30 days following the end of the month in which the case was closed. The Adult Protective Services Transmittal Form (APS-4) shall serve as a cover document for the Client Registration and Client Termination Forms being forwarded. (See Appendices E, F and D, incorporated herein by reference.)

5:72-3.6 Staff requirements

(a) The county director shall ensure that county adult protective services workers engaged in carrying out the mandates of the Adult Protective Services Act and these rules meet the following standards:

1. Graduation with a master's or a bachelor's degree in social work or as a registered nurse from an accredited institution; and

2. Completion of the 90 hour mandatory basic training program offered by the Division.

(b) Exceptions to the above staffing standard shall be made by the county adult protective services provider only in emergent circumstances and only for periods of no more than 30 days.

(c) Any full time staff actively employed as county provider representatives as of the effective date of these rules shall be considered to have met the requirements as set forth in (a)1 above.

(d) Aides, volunteers, and social work students are not subject to the requirements of (a) above and may be used as adjuncts to trained county adult protective services workers. Aides, volunteers, and students shall not, however, carry primary responsibility for evaluating reports or providing case management services.

5:72-3.7 Confidentiality

(a) All records and communications pertaining to any report, evaluation, or service pursuant to the Adult Protective Services Act, P.L. 1993, c.249, N.J.S.A. 52:27D-406 et seq, shall be confidential. All third party information, together with the identity of reporters, witnesses and the adults allegedly in need of protective services shall be confidential, except disclosures which may be necessary for the Commissioner or the county adult protective services provider to perform their duties and to support any findings that may result from the evaluation of a report. All county adult protective services provider staff, aides, volunteers and students shall maintain confidentiality in all matters pertaining to the Adult Protective Services Program. Information may only be released when:

1. The disclosure of information is necessary for the adult protective services provider to perform its responsibilities as set forth in this chapter; or

2. A court of competent jurisdiction directs disclosure.

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5:72-3.8 Record retention

All records pertaining to a report of abuse, neglect or exploitation of a vulnerable adult and the county adult protective services provider's documents regarding provider actions shall be maintained by the county adult protective services provider for a minimum of three years after a case has been closed.

5:72-3.9 Interviews with vulnerable adults for public information or research

(a) The county adult protective services provider may, but need not, allow interviews with vulnerable adults receiving services for the purposes of public information or research. If the county adult protective services provider wishes to assist potential interviewers, it shall first:

1. Contact the vulnerable adult or his or her guardian, as appropriate, to explain the nature of the request, ensure that the vulnerable adult understands the request, and determine whether the vulnerable adult is willing to participate; and

2. Obtain written consent from the vulnerable adult or his or her guardian, as appropriate.

5:72-3.10 Liability insurance

The county provider shall maintain sufficient liability insurance to cover the agency and all staff involved in the provision of services under these rules.

5:72-3.11 Fiscal and audit requirements

The county adult protective services provider shall maintain accurate fiscal records regarding program expenditures as provided for in the contract between the county adult protective services provider with the Division. The county director shall submit the following documents: the APS Quarterly Project Report (APS-21); the APS Contract Budget Summary (APS-22); the APS Personnel Summary (APS-23); the APS Budget Proposal (APS-24); and other fiscal and program information deemed necessary by the Division to maintain accountability. (See Appendices M, N, O and P, incorporated herein by reference.)

5:72-3.12 Complaints

The county adult protective services provider shall establish and maintain written procedures for receiving, evaluating and responding to complaints from clients, caregivers, family members and other interested or involved individuals or agencies.

SUBCHAPTER 4. ELIGIBILITY

5:72-4.1 Vulnerable adult

(a) A person who meets the following criteria is a vulnerable adult who shall be eligible for protective services:

1. Eighteen years of age or older;

2. Residing in a community setting;

3. Lacking sufficient understanding or capacity to make, communicate, or carry out decisions concerning his or her well-being because of a physical or mental illness, disability, or deficiency; and

4. The subject of abuse, neglect or exploitation.

5:72-4.2 Nonmedical remedial treatment

A person shall not be deemed to be the subject of abuse, neglect or exploitation or in need of protective services for the sole reason that the person is being furnished nonmedical remedial treatment by spiritual means through prayer alone or in accordance with a recognized religious method of healing in lieu of medical treatment, and in accordance with the tenets and practices of the person's established religious tradition.

5:72-4.3 No financial eligibility requirement

There shall be no financial eligibility criteria applied for an adult protective services evaluation and visits by a county adult protective services worker.

SUBCHAPTER 5. SCREENING

5:72-5.1 Who may report

A person who has reasonable cause to believe that a vulnerable adult is the subject of abuse, neglect or exploitation may report the information to the county adult protective services provider.

5:72-5.2 Information to be reported

The report, if possible, shall contain the name and address of the vulnerable adult; the name and address of the caretaker, if any; the nature and possible extent of the vulnerable adult's injury or condition as a result of abuse, neglect or exploitation; and any other information that the person reporting believes may be helpful.

5:72-5.3 Immunity for persons who report

A person who reports information pursuant to this chapter, or provides information concerning the abuse of a vulnerable adult to the county adult protective services provider, or testifies at a grand jury, judicial or administrative proceeding resulting from the report, is immune from civil and criminal liability arising from the report, information, or testimony, unless the person acts in bad faith or with malicious purpose.

5:72-5.4 Retaliation for filing of reports prohibited

No employer or any other person shall take any discriminatory or retaliatory action against an individual who reports abuse, neglect or exploitation pursuant to the act and this chapter. An employer or any other person shall not discharge, demote or reduce the salary of an employee because the employee reported information in good faith pursuant to the act and this chapter. A person who violates this section is liable for a fine of up to $1,000.

5:72-5.5 Access for reporting

(a) A county adult protective services provider shall provide access for reporting abuse, neglect and exploitation. Information shall also be available to a person who reports abuse, neglect or exploitation on methods of accessing emergency assistance.

(b) The county adult protective services provider is not required to receive reports after normal business hours. The county adult protective services provider may, at its own discretion, choose to operate an after hours response program either directly or through an agreement with another system in the county.

(c) Anonymous reports may be accepted by the county adult protective services provider. The county adult protective services provider shall encourage persons making reports to remain available to provide additional information that may be needed to complete the evaluation. The county adult protective services provider shall advise persons making reports that notwithstanding the provider's intention to preserve anonymity, should a court order be obtained by a third party to reveal the source of a report, anonymity may not be possible.

5:72-5.6 Adult protective services screening

(a) Adult protective services screening includes taking as much information as possible from the person making the report, including:

1. The name and address of the vulnerable adult;

2. The name and address of the caretaker, if any;

3. The specific allegations of abuse, neglect, or exploitation being made;

4. The nature and possible extent of the vulnerable adult's injury or condition as a result of abuse, neglect or exploitation;

5. Whether the person making the report is willing to be identified to the client or caretaker during the evaluation process; and

6. Any other information that the person reporting believes may be helpful.

(b) The county adult protective services supervisor shall be available to the staff person receiving reports for consultation if a question exists regarding eligibility.

(c) The county adult protective services supervisor shall be notified immediately if the report indicates the need for an emergency response because of a clear and substantial risk of death or immediate physical harm.

(d) Referrals to other agencies or other units within the provider agency shall be made when a report is not appropriate for response by the county adult protective services provider but other services are needed.

(e) An Inappropriate Referral Form (APS-1) shall be completed when a report alleging the need for protective services is made, but is determined not to be appropriate. (See Appendix C, incorporated herein by reference.)

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(f) The county adult protective services staff person taking the report shall record all appropriate information provided by the person making the report, and sign and date his or her notes.

5:72-5.7 Role of the county adult protective services supervisor in screening

(a) The county adult protective services supervisor or his or her designee shall be available to consult with the adult protective services provider staff person designated to receive reports.

(b) The county adult protective services supervisor or his or her designee shall determine priority for evaluating reports, including whether immediate response is required, taking into consideration the nature of the situation reported and the availability of staff.

(c) The county adult protective services supervisor or his or her designee shall assign reports for evaluation within one working day of receipt.

(d) The county adult protective services supervisor or his or her designee shall determine when the need for increased safety precautions, such as the use of a team, police assistance, arranging for secure interview locations, or other measures, may arise due to the nature of the referral, the location to be visited, or because the subject or the worker is fearful.

SUBCHAPTER 6. EVALUATING REPORTS

5:72-6.1 Purpose of the evaluation

The purpose of the evaluation is to determine, through a personal contact, whether the subject of the report is a vulnerable adult, whether the allegations of abuse, neglect or exploitation reported are valid, and whether the vulnerable adult is in need of immediate intervention to ensure his or her health and safety.

5:72-6.2 Prompt evaluation

(a) The county adult protective services provider, upon receiving a report that a vulnerable adult is being or has been subjected to abuse, neglect, or exploitation, shall initiate a prompt and thorough evaluation of the report within 72 hours, in accordance with the following requirements.

(b) Reports require an immediate evaluation when there are indications of immediate physical harm or clear and substantial risk of death to the subject of the report.

(c) All reports not requiring an immediate evaluation require that a face-to-face contact with the subject of the report be attempted within three working days. Documentation of attempts to make face-to-face contact shall be recorded when face-to-face contact is not possible because the vulnerable adult is not accessible. (See sample letter, APS-19, when no personal contact has been made.) (See Appendix K, incorporated herein by reference.)

(d) Response time requirements are the same for reports made by internal or external staff or agencies.

5:72-6.3 Conducting the evaluation

(a) An evaluation conducted pursuant to this subchapter shall be conducted by a person who meets the requirements of N.J.A.C. 5:72-3.6(a).

(b) The evaluation shall be based upon a personal visit with the vulnerable adult about whom the report was made and upon consultation with others who have knowledge of the particular case to determine whether protective services are needed and what action, if any, is required. The evaluation shall include separate face-to-face contacts with the subject of the report and the alleged perpetrator, if applicable and when appropriate, and may include a review of social, medical, and financial records, consultation with family members, medical professionals with knowledge of the subject's condition, involved agencies, or other parties who have knowledge of the subject's situation.

(c) Activities undertaken to initiate an evaluation may vary depending on the nature of the referral, and may include, but are not limited to: contacting the person who made the report for additional information; planning the first visit; consulting with the county adult protective services supervisor; contacting other agencies which may have knowledge of the situation; and contacting the subject to make an appointment for a visit.

(d) When the subject or the caregiver refuses reasonable attempts at contact for the purpose of evaluating the report, the county adult protective services worker may send a letter explaining the county adult protective services provider's responsibility to evaluate the report. (See Appendix L, APS-20, incorporated herein by reference.)

(e) An evaluation shall be considered thorough when sufficient information has been obtained to allow the county adult protective services worker to determine whether or not the report is substantiated. Reports are substantiated when the preponderance of evidence supports the allegation. An evaluation may require more than one visit to determine whether there is reasonable cause to believe that the vulnerable adult has been the subject of abuse, neglect or exploitation, depending on the complexity of the situation and the availability of necessary information.

(f) The county adult protective services worker shall make a determination regarding substantiation of the report and complete and sign the Client Evaluation Form (APS-5) within 30 working days of the first face-to-face contact with the subject of the report. (See Appendix G, incorporated herein by reference.)

5:72-6.4 Immunity for county adult protective services providers

Pursuant to P.L. 1993, c.249, N.J.S.A. 52:27D-406 et seq., a county adult protective services provider and its employees are immune from criminal and civil liability when acting in the performance of their official duties, unless their conduct is outside the scope of their employment, or constitutes a crime, actual fraud, actual malice, or willful misconduct.

5:72-6.5 Accessing records

(a) Records of public agencies, private organizations, banks and other financial institutions, medical institutions and practitioners, which the county director or his or her designee reasonably believes to be necessary to complete the evaluation, shall be made available to the county adult protective services provider.

(b) To the extent possible, county adult protective services providers shall be specific in requesting information from public agencies, private organizations, banks and other financial institutions, medical institutions and practitioners.

(c) The county adult protective services provider shall make a reasonable effort to access records and may use the Access to Records sample letter (APS-18) prior to petitioning the court. (See Appendix J, incorporated herein by reference.)

(d) If the county adult protective services provider is not successful in accessing records of public agencies, private organizations, banks and other financial institutions, medical institutions and practitioners necessary to complete an evaluation, the county adult protective services provider may petition a court of competent jurisdiction for a court order to access needed information.

5:72-6.6 Announced and unannounced visits

(a) Depending on the specific circumstances and conditions alleged in the report, the county adult protective services worker may make either an announced or unannounced visit to conduct the evaluation.

(b) Visits shall normally be made during business hours, but may be adjusted to fit the needs of the situation.

(c) The county adult protective services worker shall identify himself or herself and his or her agency to the subject of the report and the subject's caretaker, if there is one. The worker shall inform the subject and any other party to be interviewed of his or her obligation as an adult protective services worker to evaluate the report.

(d) The county adult protective services worker may not reveal the identity of the person who made the report unless the person who made the report consents.

(e) The county adult protective services worker shall interview the vulnerable adult privately regarding allegations.

5:72-6.7 Seeking information about the subject of a report without his or her consent

Information necessary to evaluate a report may be sought by the county adult protective services worker without the specific consent of the subject of the report when the information is necessary to carry out the county adult protective services provider's responsibilities.

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SUBCHAPTER 7. PROVISION OF PROTECTIVE SERVICES

5:72-7.1 Arranging for services

If a determination is made by the county adult protective services provider that there is reasonable cause to believe that the vulnerable adult has been the subject of abuse, neglect or exploitation, the county adult protective services provider shall determine the need for protective services. If the vulnerable adult or his or her legal guardian consents, the county adult protective services provider shall provide or arrange for appropriate protective services, as may be available. The county adult protective services provider shall also make formal referrals to State, county, and local agencies, hospitals and organizations, including offices on aging for clients age 60 and over, for services which the county adult protective services provider is unable to provide directly. The county protective services provider shall follow up on referrals to determine whether services are being provided.

5:72-7.2 Referrals to the Division of Developmental Disabilities and Division of Mental Health and Hospitals

A county adult protective services provider may refer a person who needs protective services and who, because of a developmental disability or mental illness, is in need of specialized care, treatment or services, to the Division of Developmental Disabilities or the Division of Mental Health and Hospitals in the Department of Human Services, as appropriate. These Divisions shall consider referrals from the county adult protective services providers on a priority basis and assist in providing the specialized services needed to protect abused, neglected, or exploited vulnerable adults, including those 60 years and over.

5:72-7.3 Minimum visitation requirement

(a) The county adult protective services worker shall visit vulnerable adults as frequently as necessary, but at least once a month, to insure that service needs are being met.

(b) The frequency of visits shall be determined by the county adult protective services worker in consultation with the county adult protective services supervisor. This determination shall be based on the specific circumstances of the vulnerable adult's situation.

(c) Visits to vulnerable adults may be made by the county adult protective services worker or by other county provider staff, such as protective services aides or volunteers. Visits by staff from other involved agencies shall not be substituted for the county adult protective services worker's minimum visitation requirement.

5:72-7.4 Care plan

(a) The county adult protective services worker shall develop a care plan following substantiation of the report of abuse, neglect or exploitation of a vulnerable adult.

(b) The care plan shall include:

1. A statement of the problem;

2. The vulnerable adult's perception of the problem and wishes regarding outcome; and

3. Planned interventions.

(c) The county adult protective services worker shall submit the substantiation of the report and the written care plan to the county adult protective services program supervisor within 30 days after acceptance of the report.

5:72-7.5 Case recording

(a) Case progress notes shall be maintained starting with the day a report is received. Case progress notes shall document dates of contact, and provide a summary of important activities, events and changes regarding the vulnerable adult's situation. Significant contacts with other agencies, family members, or involved persons shall also be summarized and dated in the progress notes.

(b) The county adult protective services worker shall, at a minimum, record progress notes on a monthly basis. More frequent notation may be necessary if a change in the status of the vulnerable adult occurs.

5:72-7.6 Closing a case

The county adult protective services worker shall close a case when a decision is made that the vulnerable adult is no longer in need of protective services. The Adult Protective Services Termination form (APS-3) is completed by the adult protective services worker when a case is closed. (See Appendix F, incorporated herein by reference.)

5:72-7.7 Case transfer within New Jersey

(a) When a vulnerable adult moves into another county within New Jersey and protective services are still needed, the county adult protective services worker in the county from which the vulnerable adult has moved shall:

1. Call the county adult protective services screening worker in the county to which the vulnerable adult has moved to make a referral and discuss service needs;

2. Forward a summary or a copy of the pertinent materials in the vulnerable adult's case record as soon as possible, but within 30 days;

3. Consult with the new county adult protective services worker when requested; and

4. Notify cooperating agencies and other significant persons of the move.

(b) If it is determined to be in the best interests of the vulnerable adult, and if both providers agree, the original provider may continue to work with the vulnerable adult without transferring the case.

(c) The new county adult protective services provider shall assume responsibility for serving the vulnerable adult immediately upon referral, using criteria described in N.J.A.C. 5:72-6.2, Prompt evaluation.

5:72-7.8 Out-of-county residents

(a) When there is a potential for involvement by two county adult protective services providers because a reported incident occurs in one county while the vulnerable adult resides in another county, the county adult protective services provider in the county where the incident occurs shall evaluate the report, unless both providers agree to an evaluation by the county of residence.

(b) If the report is substantiated, a referral and progress notes shall be forwarded to the adult protective services provider in the county of residence, if requested.

(c) Responsibility for payment of services authorized on behalf of the vulnerable adult may be determined by the two counties in question.

5:72-7.9 Out-of-State relocation

(a) If a vulnerable adult moves out of the State of New Jersey and protective services are still needed, the county adult protective services provider shall make referral to the adult protective services agency in the state to which the vulnerable adult has relocated.

(b) Individual case information shall be shared with an out-of-State adult protection agency when the vulnerable adult continues to need protective services and the out-of-State agency maintains a similar policy of confidentiality.

5:72-7.10 Role of the county adult protective services supervisor in service provision

(a) The county adult protective services supervisor shall guide, support, and direct the county adult protective services worker in decisions and actions involving vulnerable adults and on problematic aspects of intervention.

(b) The county adult protective services supervisor shall sign and date the following forms within 30 days: Inappropriate Referral form (APS-1); APS Program Registration and Termination forms (APS-2 and APS-3); Client Evaluation form (APS-5); and client care plan within 30 days. (See Appendices C, E, F and G.)

(c) The county adult protective services supervisor shall assign cases, schedule coverage, and adjust caseloads when necessary.

(d) The county adult protective services supervisor shall accompany the county adult protective services worker on field visits to provide consultation when necessary.

(e) The county adult protective services supervisor shall review allegations of criminal misconduct regarding vulnerable adults for possible referral as specified in N.J.A.C. 5:72-8.3 (referral to local police or the county prosecutor by the county director or his or her designee).

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SUBCHAPTER 8. CRITICAL INCIDENT REPORTING

5:72-8.1 Reportable incidents

(a) The county adult protective services supervisor shall report the circumstances listed below to the State Coordinator of adult protective services in the Department of Community Affairs, Division on Aging:

1. Any suspicious death or serious injury of a vulnerable adult who has been under supervision, when brought to the attention of the county adult protective services provider;

2. Any confirmed or suspected criminal activity by county adult protective services provider staff involving the Adult Protective Services program;

3. Any civil, criminal or legal actions filed against the county adult protective services provider, brought as a result of involvement with the Adult Protective Services program;

4. Death or serious injury of a county adult protective services provider's staff member while performing adult protective services responsibilities; and

5. Situations which involve or might involve hostile or controversial media coverage.

5:72-8.2 Reporting procedures

(a) When a critical incident occurs, the county adult protective services supervisor shall notify the State Coordinator, Adult Protective Services Program, by telephone within two working days. In any instance where there is doubt as to whether an incident requires reporting, the supervisor shall contact the State Coordinator for clarification.

(b) The Critical Incident Report form (APS-6) shall be submitted to the State Coordinator, Adult Protective Services, within five working days of the incident. (See Appendix H, incorporated herein by reference).

5:72-8.3 Reporting criminal acts

If the county director, or his or her designee, has reasonable cause to believe that a caretaker or other person has committed a criminal act against a vulnerable adult, including, but not limited to, P.L. 1989, c.23 (N.J.S.A. 2C:24-8) (commonly referred to as the caretaker neglect statute), he or she shall immediately report the information to local law enforcement officials or the prosecutor of the county in which the alleged criminal act was committed. If the report is made orally, a written report shall follow within three working days.

SUBCHAPTER 9. INVOLUNTARY SERVICES

5:72-9.1 Petition for access to the subject of a report

If the county adult protective services provider is prevented from conducting an evaluation of a report of abuse, neglect or exploitation, the county adult protective services provider may petition a court of competent jurisdiction for an order to conduct the evaluation.

5:72-9.2 Petition for caretaker non-interference

(a) If the vulnerable adult's caretaker or any other person interferes with the provision of protective services, the county adult protective services provider shall petition the court for an order enjoining the caretaker or any other person from interfering with the provision of services.

(b) Any other party concerned with the welfare of the vulnerable adult may also petition the court for an order enjoining the caretaker or any other person from interfering with the provision of services.

(c) The petition filed by the county adult protective services provider shall present facts to show that:

1. The vulnerable adult is in need of protective services;

2. The vulnerable adult or his or her guardian consents to the receipt of services; and

3. The adult's caretaker or other person has interfered with the provision of services.

(d) The judge shall issue an order enjoining the caretaker or other person form further interference if it is found that:

1. The adult requires protective services;

2. The vulnerable adult or his or her guardian consents to the services; and

3. The vulnerable adult has been prevented from receiving the protective services by his or her caretaker or other person.

5:72-9.3 Petitioning for access to records

(a) Records of public agencies, private organizations, banks and other financial institutions, medical institutions and practitioners, which the county director or his or her designee reasonably believes to be necessary to complete the evaluation, shall be made available to the county adult protective services provider.

(b) To the extent possible, county adult protective services providers shall be specific in requesting information from public agencies, private organizations, banks and other financial institutions, medical institutions and practitioners.

(c) The county adult protective services provider shall make a reasonable effort to access records and may use the Access to Records sample letter (APS-18) prior to petitioning the court. (See Appendix J, incorporated herein by reference.)

(d) If the county adult protective services provider is not successful in accessing records of public agencies, private organizations, banks and other financial institutions medical institutions and practitioners necessary to complete an evaluation, the county adult protective services provider may petition a court of competent jurisdiction for a court order to access needed information.

5:72-9.4 Petitioning for emergency protective services

(a) The county director or his or her designee shall petition a court of competent jurisdiction for an order authorizing the provision of protective services if the county director or his or her designee reasonably determines that an emergency exists and the vulnerable adult refuses or is unable to consent to the protective services.

(b) The petition shall set forth:

1. The name, age and residence of the adult;

2. The nature of the emergency;

3. The proposed protective services; and

4. Sufficient facts to show that:

i. The adult is a vulnerable adult in need of protective services as a result of abuse, neglect or exploitation;

ii. The adult, without protective services, will incur a clear and substantial risk of death or immediate physical harm;

iii. The adult refuses or is unable to consent to the protective services; and

iv. No other person authorized by law or court order to give consent for the adult is available and willing to arrange for protective services.

(c) The court shall set the case for hearing within 24 hours of receipt of a petition pursuant to this section. The adult has the right to an attorney of his or her choice, or the court shall appoint counsel.

(d) Every reasonable effort shall be made to provide notice of the hearing, including a copy of the petition, to the adult, the adult's attorney, legal guardian, spouse or, if none, to his or her adult children or next of kin, and caretaker, if any, prior to the hearing.

(e) A reasonable effort shall be made to provide for the participation of the adult at the hearing.

(f) The court may waive the notice requirement and schedule an *ex parte* hearing immediately upon receipt of the petition if the court finds that there is a clear and substantial risk to the adult of death or irreparable injury if the order were delayed.

(g) The judge shall issue an order authorizing the provision of protective services if, at the hearing, the judge finds by clear and convincing evidence that:

1. The adult is a vulnerable adult in need of protective services as a result of abuse, neglect or exploitation;

2. The adult, without protective services, will incur a clear and substantial risk of death or immediate physical harm;

3. The adult refuses or is unwilling to consent to services; and

4. No other person authorized by law or court order to give consent for the adult is available and willing to arrange for protective services for the adult.

(h) The court shall order only such protective services as are necessary to remove the conditions creating the emergency.

(i) An emergency order entered by the court may not exceed 72 hours. The county director or his or her designee, upon determining that continued services are necessary to prevent death or serious physical

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harm, may apply for continuation of the order for an additional 72-hour period, if a guardian has not been named.

(j) If an emergency order is entered *ex parte*, the vulnerable adult or any other party, on behalf of the vulnerable adult, may petition the court to have the order modified or vacated, and the court shall consider the petition on an emergent basis.

5:72-9.5 Petition for non-emergency protective services

(a) The county director or his or her designee shall petition a court of competent jurisdiction for an order authorizing the provision of protective services if the director or his or her designee reasonably determines that a vulnerable adult will incur a substantial risk of physical harm or deterioration without protective services, and the adult refuses or is unable to consent to the services.

(b) The petition shall set forth:

1. The name, age and residence of the adult;
2. The proposed protective services; and
3. Facts sufficient to show that:

i. The adult is a vulnerable adult in need of services as a result of abuse, neglect or exploitation;

ii. The adult will incur a substantial risk of physical harm or deterioration without protective services;

iii. The adult refuses or is unable to consent to the services; and

iv. No other person authorized by law or court order to give consent for the adult is available and willing to arrange for protective services.

(c) The court shall set the case for hearing within three court days after the filing of the petition.

(d) The adult has the right to an attorney of his or her choice or the court shall appoint counsel.

(e) The court may issue an order requiring a psychiatric or psychological assessment or examination to determine the vulnerable adult's understanding or capacity, and the nature of, or reason for the refusal, if the vulnerable adult refuses protective services.

(f) Every reasonable effort shall be made to provide notice of the hearing, including a copy of the petition to the adult, the adult's attorney, legal guardian, spouse or, if none, to his or her adult children or next of kin and caretaker, if any.

(g) A reasonable effort shall be made to provide for the participation of the vulnerable adult at the hearing.

(h) If there has been a psychiatric or psychological assessment or examination of the vulnerable adult, the psychiatrist, psychologist, or licensed clinical social worker shall provide a report to the court and to the attorney for the vulnerable adult.

(i) The judge may issue an order authorizing the provision of protective services if, at the hearing, the judge finds by clear and convincing evidence that:

1. The adult is a vulnerable adult in need of the services as a result of abuse, neglect or exploitation;
2. The adult will incur a substantial risk of physical harm or deterioration without protective services;
3. The adult refuses or is unable to consent to the services;
4. No other person authorized by law or court order to give consent for the adult is available and willing to arrange for protective services; and
5. The report of the psychiatrist, psychologist or licensed clinical social worker, if there has been an assessment or an examination, states that the vulnerable adult lacks the understanding or capacity to refuse the protective services.

(j) The order for non-emergency protective services may designate an individual or organization to be responsible for the provision of, arrangement for, or consent for the protective services on behalf of the adult.

(k) A protective services order shall not exceed 30 days, but may be continued for an additional 30-day period upon application of the county director or his or her designee, and proof that the vulnerable adult would suffer a substantial risk of physical harm or deterioration if the protective services were withdrawn. The court may not grant any further renewal of the order.

5:72-9.6 Permanent change in living situation

No permanent changes in the living situations of an abused, neglected or exploited vulnerable adult shall be made under the authority of the Adult Protective Services Act, P.L. 1993, c.249, N.J.S.A. 52:27D-406 et seq. If a permanent change in the living situation or non-emergency medical treatment is necessary, the appropriate guardianship, conservatorship or civil commitment action shall be initiated by the county adult protective services provider pursuant to applicable State law.

5:72-9.7 Right to review a court order

The vulnerable adult, or the individual or organization responsible for providing protective services for the vulnerable adult, has the right to move for review of a court order pursuant to this act, notwithstanding a finding by the court of a lack of capacity to consent to protective services.

5:72-9.8 Payments from the estate

The court may order payments to be made by or on behalf of the vulnerable adult for protective services from his or her own estate.

SUBCHAPTER 10. FINANCIAL MANAGEMENT

5:72-10.1 Accountability in formal arrangements

(a) Procedures to ensure fiscal accountability shall be followed if the county adult protective services provider elects to assume responsibility for managing the financial assets of a vulnerable adult in the capacity of a:

1. Representative payee;
2. Legal custodian for veteran's benefits;
3. Financial guardian;
4. Conservator; or
5. Power of attorney.

(b) The county adult protective services provider shall take all appropriate action to safeguard the vulnerable adult's funds including:

1. Maintaining an accurate and complete record of all financial transactions in the vulnerable adult's case record;
2. Keeping separate accounts for each vulnerable adult in order to prevent the commingling of one vulnerable adult's fund's with another account;
3. Providing documentation for all disbursements;
4. Requiring approval of expenditures on behalf of a vulnerable adult by one staff person designated for this function; and
5. Giving vulnerable adults receipts for all cash or valuables received.

5:72-10.2 Accountability for informal arrangements

(a) County adult protective services workers may assist vulnerable adults in handling routine financial matters. This informal financial handling may include bill paying and money handling services which consist of:

1. Cashing checks;
2. Purchasing items for the vulnerable adult with cash;
3. Making deposits and withdrawals;
4. Helping vulnerable adults organize and maintain financial records;
5. Explaining amounts due for rent, utilities, medical care, taxes, and other bills; and
6. Preparing checks for signature by the vulnerable adult.

(b) Financial transactions on behalf of vulnerable adults shall only be undertaken with their consent or under court order.

(c) The county adult protective services provider shall establish appropriate accountability measures to ensure proper documentation of all financial transactions conducted by county adult protective services workers on behalf of vulnerable adults.

(d) At a minimum, the county adult protective services provider shall:

1. Give vulnerable adults a receipt for cash or other valuables received for safekeeping or transfer;
2. Have a third party witness transactions involving a vulnerable adult's cash or valuables, when possible;
3. Document all financial transactions in the progress notes, including dates, amounts, and reasons; and
4. Obtain receipts from vulnerable adults for cash or valuables returned to them.

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SUBCHAPTER 11. GUARDIANSHIP AND CONSERVATORSHIP

5:72-11.1 Guardianship or conservatorship

(a) The county director or his or her designee may initiate appropriate legal action including, but not limited to, petitioning for guardianship or conservatorship in order to protect a vulnerable adult.

(b) A conservatorship petition shall only be filed if a vulnerable adult is competent and willing to accept a conservator to act as fiduciary.

(c) The county adult protective services provider shall seek guardianship when there is reasonable cause to believe that the vulnerable adult is incompetent, subject to abuse, neglect or exploitation, and cannot be protected with less intrusive measures.

(d) A guardianship petition shall only be filed by the county adult protective services provider when there are no other appropriate persons willing to file for guardianship.

(e) The county adult protective services provider, in petitioning the court for guardianship of a vulnerable adult, shall only seek the specific limited authority needed to protect the vulnerable adult, preserving as much independence as possible.

(f) If guardianship is being planned, the county adult protective services worker shall initiate any applications for public benefits or institutional care that may be necessary for the vulnerable adult's care so that the guardian, on appointment, will be able to act quickly to arrange for appropriate care.

(g) The county adult protective services provider shall attempt to identify a person or agency to serve as a guardian for a vulnerable adult.

(h) The Office of the Public Guardian may be used for adults over the age of 60 or the county adult protective services provider may develop resources within the private bar or with other public or private agencies to serve as guardian.

(i) The county adult protective services provider may petition the court for reimbursement of the following costs from the vulnerable adult's estate:

1. Court costs and filing fees;
2. Attorney fees (retainer or salary equivalent);
3. Assessment and appraisal fees;
4. Medical and psychiatric evaluations necessary to bring a guardianship petition;
5. Costs for staff time and purchased services authorized by a temporary guardian appointed by the court; and
6. Other costs involved in filing the guardianship petition.

5:72-11.2 Coordination with the Office of the Public Guardian

(a) When the county adult protective services provider recommends that the Public Guardian be appointed to act for a vulnerable adult in a guardianship petition, the county adult protective services worker shall forward a short summary to the Director of Social Work, Office of the Public Guardian, using the Referral to the Office of the Public Guardian form (APS-17) within five working days of the filing of the petition. (See Appendix I, incorporated herein by reference.)

(b) The county adult protective services worker shall assist the Office of the Public Guardian in making an initial visit to the vulnerable adult when requested.

(c) The county adult protective services worker shall assist the case manager from the Office of the Public Guardian in identifying local service agencies which could be used in carrying out the recommended plan of care.

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APPENDIX A

STATE OF NEW JERSEY

DEPARTMENT OF COMMUNITY AFFAIRS

GRANT/LOAN AGREEMENT

Agreement Number _____ Date _____

Account Number _____

Program _____

_____

Recipient _____

_____

Agreement Pages 1 through _____

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APPENDIX B

STATE OF NEW JERSEY
GRANT/LOAN PROVISIONS BETWEEN

THE DEPARTMENT OF COMMUNITY AFFAIRS

AND

_____
(RECIPIENT)

AGREEMENT NUMBER _____

		PAGE
A.	PRE-AWARD TERMS	
I.	Agreement Data	1
II.	Assurances	3
III.	Affirmative Action	4
IV.	Bonding and Insurance	4
V.	Indemnification	5
VI.	Assignability	5
VII.	Availability of Funds	5
VIII.	"High Risk" Special Grant Conditions	5
B.	POST-AWARD REQUIREMENTS	
IX.	Financial Management System	6
X.	Statement of Assurances	6
XI.	Method of Payment	7
XII.	Allowable Costs	7
XIII.	Lobbying	7
XIV.	Period of Availability of Funds	7
XV.	Matching and Cost Sharing	8
XVI.	Project Income	8
XVII.	Interest	8
XVIII.	Financial and Performance Reporting	8
XIX.	Monitoring of Project Performance	9
XX.	Audit Requirements	10
XXI.	Agreement Revision and Modification	10
XXII.	Property Management Standards	11
XXIII.	Procurement Standards	11
XXIV.	Closeout Procedures	11
XXV.	Termination and Suspension	12
XXVI.	Access to Records	13
XXVII.	Record Retention	13
XXVIII.	Enforcement	13

ATTACHMENTS

A. Additional Agreement Provisions
B. Approved Budget
C. Project Information and Specifications
D. Program Specific Provisions

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APPENDIX C

Adult Protective Services Inappropriate Referral

APS - 1

County: _____ Date: _____

Name of Subject	Name of Referrer Address/Phone

Nature of Referral

Disposition

Worker: _____ Date: _____

Supervisior: _____ Date: _____

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APPENDIX D

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
Division on Aging

APS - 4

ADULT PROTECTIVE SERVICES TRANSMITTAL FORM

Submit to: APS Information Systems
Division on Aging
CN 807
Trenton, NJ 08625-0807

Registration Number	2 (X)	3 (X)	Registration Number	2 (X)	3 (X)	Registration Number	2 (X)	3 (X)
1.			21.			41.		
2.			22.			42.		
3.			23.			43.		
4.			24.			44.		
5.			25.			45.		
6.			26.			46.		
7.			27.			47.		
8.			28.			48.		
9.			29.			49.		
10.			30.			50.		
11.			31.			51.		
12.			32.			52.		
13.			33.			53.		
14.			34.			54.		
15.			35.			55.		
16.			36.			56.		
17.			37.			57.		
18.			38.			58.		
19.			39.			59.		
20.			40.			60.		

TOTAL NUMBER 2's _____ County _____

TOTAL NUMBER 3's _____ Submitted by _____

PERIOD COVERED _____ to _____ Date _____

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APPENDIX E

State of New Jersey
Department of Community Affairs
Division on Aging

APS-2 8/94

ADULT PROTECTIVE SERVICES PROGRAM REGISTRATION County:

I. REFERRAL:

1. Date of Referral _____ 2. Registration No. _____

3. Name of Client _____
Address _____
City _____ State _____ Zip _____
Phone: ( ) _____ 4. Mun. Code _____

5. Living Arrangement *(Check One)*
☐ 1 Alone ☐ 2. Spouse ☐ 3. Relative(s) ☐ 4. Non-relative(s)
☐ 5. Homeless ☐ 6. Other

6. Referral made by: Name _____
Name of Agency _____
Address: _____
City _____ State _____ Zip _____
Phone: ( ) _____ Anonymity Requested ☐ Y ☐ N

7. Referral Source (Check One)
☐ 1. Provider Agency ☐ 2. Other Social Service Agency
☐ 3. Home Care Services ☐ 4. Health Care Services
☐ 5. Office on Aging ☐ 6 Law Enforcement
☐ 7. Relative ☐ 8. Non-Relative
☐ 9. Self

Referral Information:

8. Type of Referral: *(Check primary one)*

Abuse	Neglect	Exploitation
☐ 1. Physical	☐ 4. Self	☐ 7. Financial
☐ 2. Psychological	☐ 5. Caretaker	☐ 8. Personal
☐ 3. Sexual	☐ 6. Caretaker (Overwhelmed)	

9. Referral Description: _____

Date Worker

II. RESPONSE: 10. Date of Initial Investigation Mo. _____ Da. _____ Yr. _____

11. Initial Findings: _____

Client 12. Age: _____ 13. Birthdate: _____ 14. Sex ☐ M ☐ F 15. Ethnicity ☐ 1. Caucasian ☐ 2. Black ☐ 3 Hispanic ☐ 4. American Indian ☐ 5. Asian ☐ 6 Other

16. S.S.I ☐ Y ☐ N 17. Marital Status: ☐ One ☐ 1 Married ☐ 2. Single ☐ 3. Widowed ☐ 4 Divorced

18. Income Monthly (Check One) ☐ 1. 0-No Income ☐ 2. 1-350 ☐ 3. 351-500 ☐ 4. 501-1300 ☐ 5 1300-over

19. Initial Referral Substantiated ☐ Y ☐ N If no, was another problem substantiated? ☐ Y ☐ N
If yes, enter code _____ (from Section #8)

20. Case Accepted ☐ Y ☐ N 21. Case Re-opened ☐ Y ☐ N

22 Date _____ Worker _____ 23. Code _____

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APPENDIX F

State of New Jersey
Department of Community Affairs
Division on Aging

APS-3 - 6/94

ADULT PROTECTIVE SERVICES TERMINATION **County:** _____

Client's Name	Registration No.

1. Services Provided:

- ☐ 1. Homemaker/Health Care
- ☐ 2. Chore/Cleaning
- ☐ 3. Respite
- ☐ 4. Day Care
- ☐ 5. Food/Clothing
- ☐ 6. Emergency Shelter
- ☐ 7. Medical Care
- ☐ 8. Representative Payee
- ☐ 9. Guardianship-Agency Assisted
- ☐ 10. Guardianship-Agency Filed
- ☐ 11. Guardian-Agency Appointed
- ☐ 12. Access to Subject
- ☐ 13. Emergency Order
- ☐ 14. Non-emergency Order
- ☐ 15. Caretaker Non-interference Order
- ☐ 16. Records Access

2. Risk Factors: Is client functionally impaired? ☐ Yes ☐ No If yes, check only one primary functional impairment.

- ☐ 1. Physical impairment
- ☐ 2. Mental impairment
- ☐ 3. Both physical and mental impairment
- ☐ 4. Mental Retardation
- ☐ 5. Dementia/Alzheimers

3. Dependency Factors:

1. Is client dependent on others for activities of daily living? ☐ Yes ☐ No
2. Is family involved in providing care or financial assistance to client? ☐ Yes ☐ No
3. Does client have a substance abuse problem? ☐ Yes ☐ No

If yes, check one: ☐ DRUG ☐ ALCOHOL ☐ BOTH

4. Alleged Perpetrator: Applicable ☐ Yes ☐ No (If no, proceed to Section 5)

1. Was alleged perpetrator identified? ☐ Yes ☐ No
2. Was alleged perpetrator interviewed? ☐ Yes ☐ No

   Age _____ Sex ☐ M ☐ F
3. Reported to Prosecutor? ☐ Yes ☐ No
4. Alleged Perpetrator's Relationship to Client: (Check One)

☐ 1. Spouse ☐ 2. Son ☐ 3. Daughter ☐ 4. Other relative ☐ 5. Non-relative

5. APS TERMINATION: ***a. Housing at termination (check one)***

- ☐ 1. Private Residence
- ☐ 2. Boarding Home or RHCF
- ☐ 3. Rooming House
- ☐ 4. Nursing Home
- ☐ 5. Mental Institution
- ☐ 6. Homeless
- ☐ 7. Other _____

b. Reason for termination (check one)

- ☐ 1. No longer at risk
- ☐ 2. Unable to locate
- ☐ 3. Refused services
- ☐ 4. Deceased
- ☐ 5. Referred to another program
- ☐ 6. Moved out of state
- ☐ 7. Transferred to another APS program

c. Effective Date _____

7. Case Summary:

Worker: ***Date:***

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APPENDIX G

Department of Community Affairs
Division on Aging

Adult Protective Services
Client Evaluation Form

APS-5
page 1 of 7

I. EVALUATION SUMMARY

Client Name: _____ Age: _____

Address: _____

Phone: _____ Date Report Received: _____ Registration #: _____

Allegation: _____

_____

_____

_____

	Substantiated	Not Substantiated
Abuse:	☐	☐
Neglect:	☐	☐
self	☐	☐
caregiver	☐	☐
Exploitation	☐	☐

If substantiated, is the subject:

lacking in capacity ☐ Y ☐ N If yes, is this due to: ☐ physical impairment ☐ mental impairment ☐ alcoholism or substance abuse

willing to accept services ☐ Y ☐ N ☐ somewhat

LEVEL OF RISK (check all that apply)

	high	low	none
Abuse	☐	☐	☐
Self neglect	☐	☐	☐
Caregiver neglect	☐	☐	☐
Exploitation	☐	☐	☐

ACTION TAKEN

Case accepted ☐ Case not accepted ☐

Referred to: _____

SIGNATURES

_____ _____
Worker Date Supervisor Date

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II. CLIENT ASSESSMENT

Check those ***items that are characteristic of the client or situation*** and use the comments to explain items checked. This section is also used to add any items and to identify strengths as well.

a. Client Appearance (*describe*)

b. Mental Functioning

1. Mental Status

- ☐ disoriented to time
- ☐ disoriented to place
- ☐ disoriented to person
- ☐ incoherent
- ☐ poor memory
- ☐ depressed, withdrawn
- ☐ confused
- ☐ severely anxious
- ☐ unreasonably fearful
- ☐ cannot follow conversation
- ☐ faulty judgment/reasoning
- ☐ frequent calls to police
- ☐ mini-mental score, if appropriate
- ☐ mental retardation

2. Depression

- ☐ change in eating patterns
- ☐ change in sleeping patterns
- ☐ recent loss
- ☐ decreased social interaction
- ☐ loss of interest

3. Mental Illness

- ☐ psychiatric history
- ☐ bizarre behavior
- ☐ hears voices
- ☐ visual hallucinations
- ☐ inappropriate affect

4. Alcoholism/Substance Abuse

- ☐ previous history
- ☐ smells of alcohol
- ☐ slurred speech
- ☐ dilated pupils
- ☐ frequent falls
- ☐ bottles present
- ☐ frequent car accidents
- ☐ abuse of Rx medications

c. Physical Functioning Deficits

- ☐ continence
- ☐ vision
- ☐ hearing
- ☐ mobility
- ☐ speech
- ☐ chewing/swallowing

COMMENTS

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d. ADLS/Instrumentals: Client is unable to perform independently

- ☐ dress/undress self
- ☐ bathe self
- ☐ groom self
- ☐ shop for food
- ☐ prepare meals
- ☐ do housekeeping/laundry
- ☐ drive/arrange transportation
- ☐ use appliances safely
- ☐ use telephone
- ☐ seek medical care
- ☐ self-administer medication

e. Ability to Manage Finances

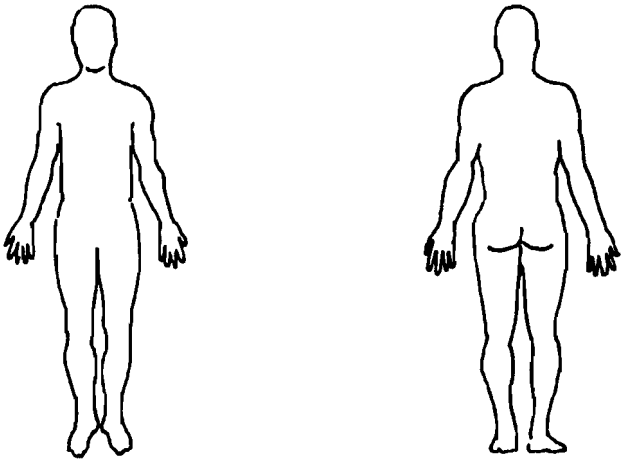
- ☐ has given power of attorney
- ☐ unpaid bills/overpaid bills
- ☐ uncashed checks
- ☐ no awareness of $ or accounts
- ☐ stores cash at home
- ☐ gives money away
- ☐ signed over house
- ☐ inadequate income
- ☐ supports other(s) on income
- ☐ has representative payee

f. Environment: Describe living arrangement

- ☐ inadequate plumbing
- ☐ utilities not working
- ☐ no refrigerator or stove
- ☐ fire/safety hazards
- ☐ insects/mice/rats
- ☐ house needs major repair
- ☐ accumulated garbage, unclean
- ☐ home condemned/eviction notice

Comments

g. Injury Location Chart



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III. OTHERS INVOLVED WITH SUBJECT

a. Others in household and relationship to subject

b. Family members, significant others not in household

c. Important Medical Information on Subject

Diagnosis: _____

_____

Doctor's name: _____ Last seen: _____

Medications: _____

_____

_____

Health insurance:

Advance directive: ☐ yes ☐ no If yes, indicate where kept: _____

d. Current arrangements for home care and other assistance

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IV. CAREGIVER INTERVIEW SUMMARY

a. Name: _____

Relationship: _____

Address: _____

_____

Phone: _____ Age: _____

List caregiving tasks: _____

_____

_____

Check and comment on problem areas in the caregiving relationship

- ☐ knowledge about care needs
- ☐ financial ties to subject
- ☐ reliability
- ☐ coping ability
- ☐ mental limitations
- ☐ physical limitations
- ☐ suspected substance abuse
- ☐ excessive use of alchohol
- ☐ appears overburdened
- ☐ appears mentally disturbed
- ☐ will not allow services

b. Caregiver's account of situation: _____

V. ALLEGED PERPETRATOR INTERVIEW SUMMARY

a. Name: _____

Relationship: _____

Address: _____ _____

_____

Phone: _____

If alleged perpetrator is not also the caregiver, check and comment on problem areas.

- ☐ knowledge of care needs
- ☐ financial ties to subject
- ☐ reliability
- ☐ coping ability
- ☐ mental limitations
- ☐ physical limitations
- ☐ suspected substance abuse
- ☐ excess use of alchohol
- ☐ appears overburdened
- ☐ appears mentally disturbed
- ☐ will not allow services

b. Alleged perpetrator interviewed: ☐ yes ☐ no If yes, date: _____

c. Perpetrator's account of situation: _____

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VI. SUMMARY OF SUBJECT'S ACCOUNT OF SITUATION

VII. COLLATERAL INFORMATION SUMMARY

Records reviewed

List:

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VIII. EVIDENCE OF ABUSE, NEGLECT, OR EXPLOITATION

a. Abuse/Indicators

- ☐ hospital hopping
- ☐ repeated injuries/admissions
- ☐ extremely fearful
- ☐ unreasonable confinement
- ☐ restrained, tied
- ☐ intentional social isolation
- ☐ medical care/medicine withheld
- ☐ overmedicated
- ☐ threatened
- ☐ unwanted sexual touching
- ☐ sexual assault
- ☐ bruises, welts
- ☐ broken bones
- ☐ wounds, cuts, punctures
- ☐ sprains, dislocations
- ☐ internal injuries
- ☐ burns, scalding
- ☐ injury with weapon, instrument

b. Neglect Indicators Present

- ☐ unkempt appearance
- ☐ fleas, lice
- ☐ dirty appearance
- ☐ bedsores
- ☐ appears malnourished
- ☐ dehydrated
- ☐ inadequate supervision
- ☐ inappropriate clothing
- ☐ smells of urine
- ☐ feces on person
- ☐ untreated serious illness
- ☐ no food, heat, utilities
- ☐ uses medicines incorrectly
- ☐ pet feces in house
- ☐ frequent hospitalizations

d. Financial Exploitation Indicators

- ☐ inappropriate use of resources (phone, home, food, etc.)
- ☐ mismanagement of funds
- ☐ transfer of assets, property
- ☐ many checks made out to cash
- ☐ unexplained disappearance of valuables, money
- ☐ questionable changes in will
- ☐ questionable assets transfer
- ☐ overcharging for services
- ☐ subject's resources for life essentials affected

COMMENTS

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APPENDIX H

State of New Jersey
Department of Community Affairs
Division on Aging

APS-6 11/94

Adult Protective Services Program

Critical Incident Report Form

APS Provider Agency: _____ Date: _____

_____
_____
_____
_____

Client Name: _____
Address: _____
_____
_____

1. Description of the incident with relevant dates: _____
_____
_____
_____
_____
_____
_____
_____
_____

2. Person(s), if any, making the complaint: _____
_____
_____
_____
_____
_____
_____
_____
_____

3. Background of the situation: _____
_____
_____
_____
_____
_____
_____
_____
_____

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4. Actions taken by APS to deal with the incident: _____

5. Follow-up action planned: _____

6. Involvement of other parties (prosecutor, police, public officials, media, etc.): _____

7. Action requested of the Division on Aging (if any): _____

_____
Supervisor

Note: Attach a copy of the Client Evaluation Form-APS-5.

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APPENDIX I

State of New Jersey
Department of Community Affairs
Division on Aging
Adult Protective Services Program

APS -17

Referral to the Office of the Public Guardian County: _____

Client name _____ Date of birth _____

Address _____ SSA # _____

_____

Date Filed _____ Hearing Date _____

Provider name _____

Address _____

_____

1. Reason Guardianship petition filed: _____

_____

2. Recommendations for care: ☐ institutional ☐ community ☐ other

3. Recommended providers: (nursing home, home care agencies, family members, involved others, etc.)

_____

_____

_____

4. Family involvement (describe): _____

_____

_____

5. Summary of financial status: a. monthly income _____ tot. value of assets _____

b. status of applications for public and other benefits: _____

_____

_____

6. Comments: _____

_____

_____

_____

_____

_____

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APPENDIX J

APS-18
8/94

REQUEST FOR INFORMATION PURSUANT TO
THE ADULT PROTECTIVE SERVICES ACT
P.L. 1993, c. 249 c.52:27d-406

Date:_____

To: _____
name and title

_____
address

_____

_____

Re: _____
adult's name /date of birth

_____
address

_____

The _____ has been designated by the Department of Community Affairs as an adult protective services provider agency . We evaluate reports of abuse, neglect, and exploitation of vulnerable adults under the authority of the Adult Protective Services Act cited above.

An evaluation is being conducted on _____ and access to your records on this adult is necessary to complete the evaluation. The Adult Protective Services Act provides for your cooperaton in Section 5e as follows:

"Records of public agencies, private organizations, banks and other financial institutions, medical institutions and practitioners, which the county director or his designee believes to be necessary to complete the evaluation, shall be made available to the county adult protective services provider."

Access to both past and present records on this adult is necessary to assist us in determining whether abuse, neglect or exploitation is occurring. Immunity from civil and criminal liability in the release of these records is provided by Section 4c of the Adult Protective Services Act.

Thank you for your cooperation.

Sincerely,

_____
address

_____

_____

_____
Supervisor

_____
APS Worker

_____
phone

8102A

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APPENDIX K

APS-19
8/94

SAMPLE LETTER - FOR SUBJECT WHEN NO PERSONAL CONTACT HAS BEEN MADE

Date_____

Dear _____

My agency, the _____
_____ is responsible for reaching out to older adults and people with disabilities when the possibility of serious harm exists. This responsibility is carried out under the Adult Protective Services Act passed in 1994, C.52:27d-406. I recently attempted to contact you and you were not at home. The purpose of my visit is to evaluate your circumstances. If you need assistance with medical or social services, information on benefits, or help with family problems, I may be in a position to help you.

I am planning to be in your area on _____ and would like to visit you at home on that date at _____ o'clock. If this is not convenient for you, please contact me at _____.

If I do not hear from you, I look forward to meeting with you on that date.

Sincerely,

9865A

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APPENDIX L

APS-20
8/94

Date _____

SAMPLE LETTER - WHEN A SUBJECT OR CAREGIVER REFUSES AN EVALUATION VISIT

Dear _____:

When I spoke with you on _____, you indicated that you did not want me to visit with you to evaluate your situation. I am writing to you because I would like to be sure that you understand my reason in asking to meet with you. It is my job is to reach out to older adults and people with disabilities when they may be at risk of serious harm. My agency, the _____ is legally required to look into potentially harmful situations involving vulnerable adults under the Adult Protective Services Act enacted in 1994, C.52:27d-406.

I am requesting your cooperation and am hoping that you will reconsider.

If you need assistance in arranging for medical or social services, information on benefits, or help with family problems, I may be of assistance to you.

I am planning to be in your area on _____ and could visit with you in this date. If this is not convenient for you, please contact me at _____. I look forward to meeting with you.

Sincerely,

9876A

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APPENDIX M

APS-21

NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION ON AGING
APS REPORTING SYSTEM
QUARTERLY PROJECT REPORT

_____	_____	825	_____ to _____
YEAR	COUNTY	PROJECT	REPORT PERIOD

PROJECT NAME: APS Adult Protective Service

LINE ITEM		CASH
1.	Personnel	$_____.00
2.	Purchase of Services	$_____.00
3.	Travel	$_____.00
4.	Training	$_____.00
5.	XXXXXXXXX	$_____N/A_____.00
6.	XXXXXXXXX	$_____N/A_____.00
7.	Administrative Alloc.	$_____.00
8.	Other	$_____.00
9.	XXXXXXXXX	$_____N/A_____.00
10.	Total Expenses	$_____.00

QUARTERLY LEVEL OF SERVICE

SERVICE CODE: 925	NUMBER OF REFERRALS (BASIC):	_____
SERVICE CODE: 926	NUMBER OF REFERRALS (SUPPL):	_____
SERVICE CODE: 927	NUMBER OF REFERRALS (ALL FUNDS):	_____

I CERTIFY THAT THE INFORMATION CONTAINED IN THIS STATEMENT IS ACCURATE TO THE BEST OF MY KNOWLEDGE, THAT ALL ADJUSTMENTS ARE COMPLETELY ACCOUNTED FOR, AND THAT ALL COSTS REPORTED HEREIN WERE ACCRUED IN ACCORDANCE WITH THE CONDITIONS OF THIS GRANT

PREPARED BY: _____,Project Preparer DATE: _____
REVIEWED BY: _____,Project Director DATE: _____

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APPENDIX N

APS-22

STATE OF NEW JERSEY
DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION ON AGING

AGENCY _____

COUNTY _____

ADULT PROTECTIVE SERVICES PROGRAM
CONTRACT BUDGET SUMMARY
199____

BUDGET CATEGORY	FUNDING SOURCE ▶ / GRANT AMOUNT ▶								TOTAL
PERSONNEL SALARIES									
PURCHASE OF SERVICES									
LEGAL									
CLIENT									
HOME CARE									
MISC. PURCHASE									
TRAVEL									
TRAINING									
ADMINISTRATION									
OTHER									
TOTALS									

Financial Officer's Certification: _____ *Date:* _____

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APPENDIX O

APS-23

STATE OF NEW JERSEY
DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION ON AGING

AGENCY _____

COUNTY _____

ADULT PROTECTIVE SERVICES PROGRAM
PERSONNEL SUMMARY
199___

POSITION TITLE	NAME OF EMPLOYEE	FULL TIME EQUIVALENCE IN APS	ANNUAL SALARY
	TOTALS →		

Financial Officer's Certification: _____ *Date:* _____

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APPENDIX P

APS-24

New Jersey Division on Aging
CN 807
Trenton, N. J. 08625-0807

BUDGET PROPOSAL - ADULT PROTECTIVE SERVICES

County: _____

1. Title of Project: **Adult Protective Services**	
2. Agency Director (Name, Title, Dept. and Address, Street, City State, Zip Code	5. Dates of: From Through Amount a. Basic Allocation: 1/1/95 12/31/95 $ b. Suppl. Allocation: 1/1/95 12/31/95 $ 6. Type of Organization: CWA_____ AAA_____ Private Non-Profit Agency_____
3. Program Contact (Name, Address Street, City, State, Zip Code)	7. Payee (Specify to whom checks should be sent: Name, Title, Address)
4. Official Authorized to sign for applicant Agency: (Name, Address, Title)	8. Source and Funding: Total DoA APS funding: $_____ Total Other APS funding $_____ Total Program Costs $_____

Fiscal Contact Person: _____ Phone: _____

Program Contact Person: _____ Phone: _____

Levels of Service:

Total number of referrals to be responded to in 1995: _____

Total number funded by DoA basic allocation: _____

Total number funded by DoA supplemental allocation: _____

APS: 10/27/94

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ENVIRONMENTAL PROTECTION

(a)

OFFICE OF THE COMMISSIONER

Department of Environmental Protection Rules of Practice and Procedure

Proposed Readoption with Amendments: N.J.A.C. 7:1

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3(d), 13:1B-3(e), 13:1B-5(a), 13:1K-15 et seq., and 52:14B-4(b).

DEP Docket Number: 26-95-05/531.

Proposal Number: PRN 1995-365.

Submit written comments by July 19, 1995 to:

Janis E. Hoagland, Esq.
Attention: DEP Docket Number 26-95-05/531
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

Under Executive Order No. 66(1978), N.J.A.C. 7:1 expires on August 15, 1995. As required by the Executive Order, the Department has reviewed N.J.A.C. 7:1 and determined that it continues to be necessary, reasonable and proper for the purposes it was originally promulgated to serve. The Department therefore proposes to readopt N.J.A.C. 7:1 with minor changes.

A brief summary of the contents of N.J.A.C. 7:1 and the proposed amendments follows:

Subchapter 1 (N.J.A.C. 7:1-1) contains general provisions. These general provisions outline the organization of the Department, the procedure for petitions for rulemaking, and the effect of delegations of the Commissioner's authority.

N.J.A.C. 7:1-1.1 describes the organization of the Department. N.J.A.C. 7:1-1.1 was most recently amended effective October 9, 1992. See 24 N.J.R. 4085(a). The proposed amendments reflect changes in organization of the Department since that amendment.

Any interested person may petition the Department to promulgate, amend or repeal any of its rules. N.J.A.C. 7:1-1.2 describes how to submit a petition, time frames for the Department to respond to a petition, and actions that the Department may take on a petition. N.J.A.C. 7:1-1.2 is consistent with the rules of the Office of Administrative Law governing petitions for rulemaking. The Department is proposing to readopt this section without change.

Some of the Department's rules delegate powers, duties or authorities of the Department or the Commissioner to persons or units within the Department. Under N.J.A.C. 7:1-1.3, the Commissioner may exercise those powers, duties or authorities directly, despite the delegation. Before the Department promulgated N.J.A.C. 7:1-1.3, a court had held that a delegation of authority in a rule precluded the Commissioner from exercising that authority directly. *In Re: Waterfront Development Permit No. Wd88-0443-1,* 244 *N.J. Super.* 426 (App. Div. 1990). The Department is proposing to readopt this section without change.

N.J.A.C. 7:1-1.4 defines terms used in this chapter. Three of those terms, "appellant," "permit decision" and "third party," were used in a rule proposal concerning third-party appeals of permit decisions. See 23 N.J.R. 3278(a). The Department did not adopt that rule; furthermore, the Administrative Procedure Act now prohibits State agencies from promulgating any rule or regulation that would allow a third party to appeal a permit decision, except when required by Federal law or State statute. N.J.S.A. 52:14B-3.3. Accordingly, the proposed amendments delete the definitions of "appellant," "permit decision" and "third party."

Subchapter 5 (N.J.A.C. 7:1-5) governs debarment, suspension and disqualification from Department contracting. This subchapter lists the causes for which the Commissioner may debar, suspend or disqualify persons from contracting with the Department. It also establishes the procedures for debarment, suspension or disqualification, and the period and scope of a debarment, suspension or disqualification. This subchapter is consistent with Executive Order No. 34(1976), which was issued to ensure that all persons contracting with the State meet a standard of responsibility for fair competition and honest performance in their dealings with the State. The Department is proposing to readopt this subchapter without change.

Social Impact

The readoption of N.J.A.C. 7:1 will have a positive social impact. The readoption will help to keep the public informed about the Department's organizational structure, and about the procedure for interested persons to petition the Department for rulemaking. The readoption will also continue to ensure the Commissioner's ability to be accountable for the actions of the Department. The readoption will also help to ensure that all persons contracting with the Department meet a standard of responsibility for fair competition and honest performance in their dealings with the Department.

Economic Impact

The Department expects that readopting N.J.A.C. 7:1 will continue the economic impacts of the existing rules, discussed below.

The rules governing petitions for rulemaking have no direct economic impact in most cases. A petition for rulemaking can be prepared at nominal cost. However, an interested person may choose to obtain engineering, technical and legal assistance to prepare a petition, with the goal of making the petition more persuasive.

The Department believes that the rules governing rulemaking petitions indirectly have a positive economic impact. They assist interested persons in identifying rules that the Department can amend or repeal to reduce their negative economic impact, without affecting the Department's ability to fulfill its statutory mandates.

The rules governing delegation of Department decisions have a positive economic impact. Without these rules, the Commissioner could not directly exercise authority that had been delegated; the Commissioner could exercise the authority only after the delegee's decision had been the subject of an initial decision in the Office of Administrative Law, which would then be subject to the Commissioner's review. The rules make it possible to avoid the expense of intermediate steps of review.

N.J.A.C. 7:1-5 may have a negative economic impact on persons who are debarred, suspended or disqualified from contracting with the Department. However, this subchapter has a positive economic impact for the Department, the public, and other contractors, by enabling the Department to limit its business to contractors who maintain standards of fair competition and honest performance.

Environmental Impact

The Department expects that readopting N.J.A.C. 7:1 will continue the environmental impacts of the existing rules, discussed below.

The rules governing petitions for rulemaking have no direct environmental impact. However, the Department believes that the rules indirectly may have a positive environmental impact. They can assist interested persons in identifying rules that the Department can promulgate, amend or repeal to improve environmental protection.

N.J.A.C. 7:1-5 also has no direct environmental impact, but indirectly may have a positive environmental impact. This subchapter assists the Department in maintaining minimum standards of competition and performance for its contractors. As a result, the Department's limited resources are not squandered on contractors who fail to meet those standards, and remain available for environmental protection.

Executive Order No. 27 Statement

N.J.A.C. 7:1 is not promulgated under the authority of, or in order to implement, comply with or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards for Federal requirements. Accordingly, Executive Order No. 27(1994) does not require a comparison with Federal law.

Regulatory Flexibility Analysis

N.J.A.C. 7:1-1.2 imposes compliance requirements on persons who choose to petition the Department to promulgate, amend or repeal a rule. That class of persons includes "small businesses," as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A small business can prepare a petition at nominal cost that will satisfy the requirements of N.J.A.C. 7:1-1.2. The employment of professional resources is not necessary. Accordingly, the rule minimizes any adverse economic impact on small businesses.

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Under N.J.A.C. 7:1-5, small businesses and other persons can be suspended, debarred or disqualified from contracting for failure to comply with certain State and Federal laws, contract specifications and other requirements. These standards are necessary for the Department to maintain minimum standards of competition and performance for its contractors. Accordingly, the Department has not established different requirements or exemptions for small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:1.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION [AND ENERGY]

7:1-1.1 Organization of the Department of Environmental Protection [and Energy]

(a) The Commissioner is the administrator and head of the Department of Environmental Protection [and Energy] (Department), and has the duties listed in N.J.S.A. 13:1B-3.

(b) The Counselor to the Commissioner is the Commissioner's legal liaison with the Department of Law and Public Safety. The Counselor advises the Commissioner regarding policy implications of legal issues that arise in connection with the Department's work.

(c) The Office of Dispute Resolution provides a forum other than the administrative and trial courts for resolution of disagreements involving the Department. This forum is intended to reduce or avoid costly and protracted legal proceedings, and establish more meaningful lines of communication among environmental regulators, the regulated community and other persons affected by Department actions. The Office of Dispute Resolution engages in the following forms of alternative dispute resolution:

1. Facilitation, which involves an informal meeting between the affected party and the Department staff to determine whether the parties can mutually resolve the differences that separate them. The Office of Dispute Resolution's role in facilitation is to structure this informal meeting to focus on the disputed issues and the ultimate goal. The informal meeting usually takes place before the Department's action has been formally contested; and

2. Mediation, which involves an effort by the affected parties to develop a joint resolution of the issue and agree on a future course of action. In mediation, the Office of Dispute Resolution acts as an impartial third party to help the parties explore options for resolution that may not previously have been considered. Mediation frequently takes place after the disputed action has been formally contested and scheduled for an administrative hearing or a trial.

[(b)]**(d)** The [Deputy Commissioner] **Chief of Staff** is second in command to the Commissioner, coordinates staff functions in the Commissioner's office, is responsible for the day-to-day administration of Department activities, and oversees the following organizational units:

[1. The Office of Legal Affairs, which, pursuant to Executive Order No. 6 (1990), is the legal liaison with the Division of Law in the Department of Law and Public Safety, and with the Office of Administrative Law. In that capacity, the office manages the preparation of the Department's regulations for proposal and adoption, the Commissioner's final decisions adopting, modifying or rejecting initial decisions rendered by Administrative Law Judges in administrative appeals, and requests for legal advice from the Division of Law. The office also manages the response to requests for adjudicatory hearings in contested cases, manages requests for copies of public records, and receives all subpoenas of Department employees and records. In addition, the office organizes the agenda for the Commissioner's weekly legal affairs meetings. The office includes the Department's Ethics Liaison Officer and Administrative Practice Officer.]

[2.]**1.** The Office of Audit, which provides the Department with external audits of grants, contracts, and leases, and internal financial and operational audits of its programs;

[3. The Office of Employee Relations and Equal Opportunity, which implements a comprehensive labor-management relations policy in the Department, administers all collective bargaining agreements covering unionized Department employees, and provides Department management with advice concerning the interpretation and application of labor contracts and of State and Federal statutes governing public employment. The office also represents Department management in employee grievance and arbitration proceedings, and administers the Department disciplinary program, Employee Advisory Services referrals and conflict resolution in employee-related matters. The office is also responsible for the development and implementation of the Department's affirmative action program. The office monitors all personnel practices to ensure compliance with equal employment opportunity and affirmative action policies, investigates all complaints of alleged discrimination, and, in the Department's contracting processes, enforces compliance with Federal and State statutes concerning micro, urban, small, and socially and economically disadvantaged businesses;]

2. The Office of Equal Opportunity and Public Contract Assistance, which is responsible for the development and implementation of the Department's affirmative action program. The office monitors all personnel practices to ensure compliance with equal employment opportunity and affirmative action policies, investigates all complaints of alleged discrimination, and, in the Department's contracting processes, enforces compliance with Federal and State statutes concerning micro, urban, small, and socially and economically disadvantaged businesses; and

[4. The Municipal Wastewater Assistance Element, which assists municipalities with planning, design, construction, management and administration of municipal wastewater treatment and conveyance of facilities, and with combined sewer corrective actions. The element also administers the New Jersey Wastewater Treatment Financing Program, a State revolving loan fund; and

5. The Water Supply Element, which is responsible for programs that assure adequate and safe supplies of drinking water.]

3. The Office of Information Resources Management, which is responsible for overseeing all computer management activities, including development of standards and policies, modernization of hardware and software to encourage intersystem compatibility, reviewing and approving procurement requests, and serving as a liaison to state government's central oversight agencies. The Office is also responsible for coordinating the Department's Geographic Information System (GIS), and for developing and publishing mapping and digital data standards for the GIS.

[(c)]**(e)** The Department has [six] **seven** Assistant Commissioners, as follows:

1. Enforcement;
2. Environmental Regulation;
3. **Legislative and Program Coordination;**

[3.]**4.** Management and Budget;
[4.]**5.** Natural and Historic Resources;
[5.]**6.** Policy and Planning; and
[6.]**7.** Site Remediation.

[(d)]**(f)** The Assistant Commissioner for Enforcement oversees overall Department enforcement policies and generally supervises the Department's enforcement programs associated with the following: water **pollution**; coastal [resources] **and land use management**; hazardous waste [generation, transportation, treatment, storage and disposal] **management; solid waste management;** and air pollution. The Assistant Commissioner for Enforcement also manages the issuance and settlement of enforcement documents for radiation; pesticides; noise; [land use;] toxic release; discharge prevention; laboratory [certification] **quality assurance**; and Right-to-Know. [The Assistant Commissioner for Enforcement provides general enforcement policy direction and guidance to the Department's programs for solid waste, contaminated site remediation, and fish, game and wildlife.] The Assistant Commissioner for Enforcement implements and generally supervises Operation Clean Shores, the Cooperative Coastal Monitoring Program, **the Adopt-a-Beach program, the Water Watch program and** the County Environmental Health Act[, and all Statewide water monitoring programs]. [The] **A summary of the major organizational units overseen by the** Assistant Commissioner for Enforcement **follows** [also oversees the following organizational units]:

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1. The Division of [Facility-Wide] Enforcement **Field Operations**, [which is responsible for developing a team approach to multi-media enforcement of regulated facilities. This Division] is directly responsible for enforcement associated with hazardous waste management, **solid waste management,** air pollution control, water pollution control, and safe drinking water. The Division also oversees enforcement policy and issues and settles enforcement documents for the pesticide, radiation, noise, toxic release, discharge prevention, Right-to-Know and laboratory [certification] **quality assurance** programs;

2. The Coastal and Land Use Enforcement Management Unit[, which] is responsible for enforcement matters involving freshwater and coastal wetlands, coastal area facility review, waterfront development, stream encroachment and dam safety. This unit also [provides general oversight of the enforcement policies of the fish, game and wildlife rules, and] provides coordination with the State Police, Marine Bureau, **and the Department's Division of Fish, Game and Wildlife**;

[3. The Water Monitoring Management Unit, which is responsible for conducting ambient surface and groundwater monitoring, including biological and toxics monitoring and analysis, industrial pretreatment compliance monitoring, intensive water quality surveys, lake classification management, and associated data management. This unit is also responsible for co-authoring a field procedures manual for water data management and water investigations. This unit also includes the Marine Water Classification and Analysis program, which is responsible for the classification of shellfish growing areas, operation of the Southern Regional Laboratory to support the classification program and laboratory support for Department water monitoring programs and other agencies (EPA, Delaware River Basin Commission, Food and Drug Administration) and administering a shellfish resource recovery program. The laboratory has specialized capability in nutrient analysis of marine waters and studies involving microbial indicators; and]

[4.]**3.** The Office of Enforcement Coordination[, which serves as the liaison with all enforcement programs throughout the Department, and] is responsible for assuring that a uniform enforcement policy is implemented throughout the Department. The office is also responsible for developing **and reviewing** enforcement **provisions of** regulations, [and] handling economic issues related to enforcement cases for all programs listed above [as well as the Department's Solid Waste and Site Remediation programs], **and managing Enforcement's computer system**. The office also supervises the Department's County Environmental Health Act program, Operation Clean Shores, **the Adopt-a-Beach program, Phase III of the Sewage Infrastructure Improvement Act program,** [and] the Cooperative Coastal Monitoring program, **and the Water Watch program**.

[(e)]**(g)** The Assistant Commissioner for Environmental Regulation oversees the Department's permit programs. Environmental Regulation is responsible for making permit decisions that carry out the purposes and requirements of the enabling legislation and regulations; conducting reviews of permit applications in a manner which promotes meaningful public input; developing procedural and regulatory changes, as well as non-regulatory studies and outreach efforts, to consider in the Department's permit decision-making pollution prevention, protection of critical watersheds, and the Interim State Plan; helping permit applicants to comply with applicable requirements and promptly informing applicants when their applications are incomplete or when compliance does not appear to be possible; and finding opportunities to improve efficiency of permit reviews while maintaining or improving environmental protection, eliminating procedures and requirements which do not lead to greater environmental protection, and consolidating the reviews of multiple permits for individual facilities or projects. The Assistant Commissioner for Environmental Regulation also oversees the following organizational units:

1. The Office of Permit Information and Assistance, which provides general information about the State's environmental regulations, including information about what kinds of permits are needed for various projects, and guidance which permit applicants can use to ensure that their applications are administratively and technically complete. The office also [works to promote a coordinated] **coordinates** permit review [process] **processes for complex or multi-permitted projects**; [prevent] **prevents** duplication of efforts; [enhance] **enhances** communication between Department staff, applicants and the public; and [provide] **provides** guidance on permit requirements, issues, and likely time frames for decision-making;

2. The Air Quality Regulation Program, which includes bureaus which: evaluate [proposed new major stationary sources of air pollution] **facility-wide air pollution control permits for major facilities**; review air quality modeling and risk assessments which predict ground level air contaminant concentrations and their health effects; evaluate applications for new or modified equipment which emit air contaminants; and oversee the measurement of **air** contaminant emissions from stationary sources;

3. The **Division of Solid and** Hazardous Waste [Regulation Program, which includes bureaus responsible for:]. **With respect to hazardous waste, the Division is responsible for** tracking and reporting requirements for hazardous waste; developing regulations necessary to implement the program; developing legislation, regulations, rules, policies and procedures to enable New Jersey to maintain Federal authorization to implement the Federal Resource Conservation and Recovery Act hazardous waste management program for New Jersey; and performing a technical review of applications and issuing permits to regulate the treatment, storage and disposal of hazardous waste. **With respect to solid waste, the Division is responsible for reviewing permit applications for energy recovery facilities, large-scale municipal solid waste compost projects, new and expanded landfills, landfill disruptions, transfer stations, incinerators, materials recovery facilities, vegetative compost facilities, and recycling centers; reviewing and approving closure plans for landfills, and the use of funds from the Sanitary Landfill Facility Contingency Fund (except for the payment of claims against the Fund, which is handled by the Environmental Claims Administration under the Assistant Commissioner for Site Remediation); planning source reduction, recycling and market development activities; administering statewide solid waste planning programs; coordinating the county solid waste planning process; planning for special waste materials such as contaminated soils and asbestos; implementation of the rules governing regulated medical waste; planning statewide sludge management; administering a background disclosure program for persons seeking to obtain certain solid waste permits and licenses; overseeing tariffs and rates for solid waste collection and disposal; reviewing certain transactions in the solid waste industry; issuing registrations to solid waste haulers, haulage vehicles and facilities, as well as licenses to solid waste utilities; and administering the Department's solid waste financial assistance programs**;

4. The Land Use Regulation Program, which administers the programs associated with the Waterfront Development Act, the Wetlands Act of 1970, the Coastal Area Facility Review Act, the Flood Hazard Area Control Act (stream encroachment), the Freshwater Wetlands Protection Act, [and] the Riparian Lands (Tidelands) Management Program**, the Coastal Zone Management Plan, the Water Quality Certificate Program and the Federal Consistency Program**;

5. The Office of Pollution Prevention, which is responsible for implementing the Pollution Prevention Act, and for developing the following: a pilot program to design single facility-wide permits for a set of facilities; a framework for industry to report reductions in the use and generation of hazardous substances; a systematic approach to integrate multimedia pollution prevention into existing media-specific permit programs; and policy initiatives to coordinate media-specific permit programs while emphasizing multimedia source reduction;

[6. The Office of Regulatory Policy, which oversees regulations and plans upon which regulatory decisions are based, with an emphasis upon comprehensive watershed management issues. Regulatory Policy is also responsible for water quality management plans, the Coastal Zone Management Program, the Coastal Nonpoint Pollution Control Program, and stormwater management planning;

7. The Wastewater Facilities Regulation Program, which includes bureaus responsible for: implementing the sewer connection ban program and reviewing permit applications for construction and operation of wastewater treatment facilities, sanitary sewers and alternate design septic systems; issuing New Jersey Pollutant Discharge Elimination (NJPDES) permits for discharges from industrial wastewater treatment facilities to surface waters, from industrial dischargers to municipal

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facilities, from municipal wastewater treatment facilities to surface waters, and from municipal and industrial treatment systems for process wastewater to groundwater; and regulating the discharge of contaminants and toxics into wastewater treatment facilities and regulating the management of residuals such as sludge, grit and screenings;]

6. The Division of Water Quality, which is responsible for stormwater permitting, amendments to water quality management plans, and variance requests. The Division includes bureaus responsible for: implementing the sewer connection ban program and reviewing permit applications for construction and operation of wastewater treatment facilities, sanitary sewers and alternate design septic systems; issuing New Jersey Pollutant Discharge Elimination System (NJPDES) permits for discharges from industrial wastewater treatment facilities to surface waters, from industrial dischargers to municipal facilities, from municipal wastewater treatment facilities to surface waters, and from municipal and industrial treatment systems for process wastewater to groundwater; and regulating the discharge of contaminants and toxics into wastewater treatment facilities and regulating the management of residuals such as sludge and food wastes; assisting municipalities with planning, design, construction, management and administration of municipal wastewater treatment and conveyance of facilities, and with combined sewer corrective actions; and administering the New Jersey Wastewater Treatment Financing Program, a State revolving loan fund; and

7. The Water Supply Element, which is responsible for programs that assure adequate and safe water supplies.

(h) The Assistant Commissioner for Legislative and Program Coordination oversees the following organizational units;

1. Legislative and Intergovernmental Affairs, which tracks State and Federal legislation and coordinates development of the Department's positions and testimony on legislation; serves as a liaison with local governments; and coordinates State and local environmental protection activities through technical and financial assistance to municipal environmental commissions;

2. Communications, which includes the Department's Public Information Office; monitors and supports public participation activities throughout the Department; provides editorial and design guidance to the Department in producing publications; provides centralized communications support within the Department and to other State, local, county and regional agencies; and provides writing and graphic arts services for the Department; and

3. The Office of Legal Affairs, which, pursuant to Executive Order No. 6(1990), is the legal liaison with the Division of Law in the Department of Law and Public Safety, and with the Office of Administrative Law. In that capacity, the office manages the preparation of the Department's regulations for proposal and adoption, the Commissioner's final decisions adopting, modifying or rejecting initial decisions rendered by Administrative Law Judges in administrative appeals, and requests for legal advice from the Division of Law. The office also manages the responses to requests for adjudicatory hearings in contested cases, manages requests for copies of public records, and receives all subpoenas of Department employees and records. In addition, the office organizes the agenda for the Commissioner's periodic legal affairs meetings. The office includes the Department's Ethics Liaison Officer and Administrative Practice Officer.

[(f)]**(i)** The Assistant Commissioner for Management and Budget oversees the Department's administrative, financial, contracting, personnel and central services activities. The Assistant Commissioner also oversees the following organizational units:

1. Division of Financial Management and General Services, which plans, budgets and manages the Department's finances; manages purchasing and contract administration; coordinates information systems and office automation; and provides printing, telecommunications, mailing and general services to the Department; [and]

2. Division of Personnel, which provides recruitment, placement, job classification, payroll processing, compensation administration, job specification development, counseling, and employee and health benefits services[.]**; and**

3. The Office of Employee Relations, which implements a comprehensive labor-management relations policy in the Department, administers all collective bargaining agreements covering unionized Department employees, and provides Department management with advice concerning the interpretation and application of labor contracts and of State and Federal statutes governing public employment. The office also represents Department management in employee grievance and arbitration proceedings, and administers the Department disciplinary program, Employee Advisory Services referrals and conflict resolution in employee-related matters.

[(g)]**(j)** The Assistant Commissioner for Natural and Historic Resources directly supervises the following organizational units:

1. The Division of Fish, Game and Wildlife, which is responsible for management of marine fisheries, freshwater fisheries, wildlife management, and endangered and threatened nongame species. The division also is responsible for enforcing statutes and regulations concerning wildlife resources and their habitats; education; providing wildlife information; performing laboratory services which monitor wildlife diseases; and reviewing the impacts of various types of development on wildlife;

2. The Division of Parks and Forestry, which is responsible for natural lands management, historic preservation, management of the forest environment, and management of state parks;

3. The Green Acres Program, which provides planning assistance and low-interest loans and grants to municipalities and counties for open space acquisition and recreational development projects, and provides matching grants to nonprofit organizations for open space acquisition projects. The program also serves as the Department's land acquisition agent in purchasing land for state parks, forests and wildlife management areas. The program also prepares and updates the Statewide Comprehensive Outdoor Recreation Plan, and manages all Federal funds granted to New Jersey for open space preservation and recreational development; and

4. The Engineering and Construction Program, which includes offices responsible for the following: planning and designing shore protection projects, conducting waterway maintenance, and overseeing the development of the State's Shore Protection Plan; regulating the construction and maintenance of dams to ensure their safety; removing derelict barges and scows and debris along the Hudson River and the Newark Bay area; and flood plain management.

[(h)]**(k)** The Assistant Commissioner for Policy and Planning is principally responsible for: working in concert with the Department's programs to formulate and implement policy and management initiatives for the Department as a whole; providing a forum for the free exchange of information and ideas in developing a cohesive foundation for environmental policy; coordinating with the various programs of the Department to identify priorities and apply resources so as to achieve policy and management goals as efficiently and effectively as possible; providing science and technical information to the Department; coordinating efforts on the setting of standards and complex contamination issues that cross environmental media lines; and acting as the Department's research and development branch. The Assistant Commissioner for Policy and Planning directly supervises the following organizational units:

[1. Office of Energy, which includes Energy Planning and Conservation, and Air Quality Management. Energy Planning and Conservation is responsible for energy planning and policy functions, including the development and implementation of the State Energy Master Plan. Energy Planning and Conservation is also responsible for awarding and overseeing of grants for energy conservation projects. Air Quality Management is responsible for monitoring of the State's air quality, evaluation of stationary, mobile and natural source emissions, control of air pollution from mobile sources, development of air quality regulations, and coordination and implementation of the State's responsibilities under the Federal Clean Air Act;

2. Environmental Programs Development, which initiates outreach projects such as urban park beautification and environmental education, seeks funding for such projects, identifies potential outside funding

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sources, assists in the development of project ideas, and prepares funding applications;]

1. The Office of Environmental Planning, which is responsible for the Department's Environmental Master Plan. The office is responsible for stormwater management planning, water supply planning, ground water planning, coastal planning, water quality management planning reform, water quality management plan issuance, stream classifications, surface water and ground water quality standards, the Whippany pilot project, and Phases I and II of the Sewage Infrastructure Improvement Act program;

2. The Office of Air Quality Management, which is responsible for monitoring of the State's air quality, evaluation of stationary, mobile and natural source emissions, control of air pollution from mobile sources, development of air quality regulations, and coordination and implementation of the State's responsibilities under the Federal Clean Air Act;

3. Program Coordination, which coordinates the Department's review and issuance of comments on all environmental impact statements for major projects required by the National Environmental Policy Act and the Governor's Executive Order on environmental assessment;

4. The Policy Team, which develops long-term Department-wide policy and planning strategies in coordination with other areas of the Department, interested outside organizations and the regulated community;

5. The Division of Science and Research, which provides scientific and technical information to the Department, coordinates efforts on the setting of standards and complex contamination issues that cross environmental media lines, [coordinates the Department's Geographic Information System,] and acts as the Department's research and development branch, providing a scientific basis for the Department's regulatory, enforcement and legislative actions. The Division also includes the New Jersey Geological Survey, which is responsible for characterizing ground water resources; mapping and evaluating aquifers; providing technical assistance in geophysics including delineation of ground water contamination; maintaining a satellite Geographic Information System office and hydrogeologic database; constructing geologic maps; and locating and evaluating mineral resources and naturally occurring hazards[;]. **The Division also includes the Water Monitoring Management Unit, which is responsible for conducting ambient surface and groundwater monitoring, industrial pretreatment compliance monitoring, intensive water quality surveys, lake classification management, and associated data management; co-authoring a field procedures manual for water data management and water investigations; classifying shellfish growing areas; operating the Southern Regional Laboratory to support the classification program and provide laboratory support for Department water monitoring programs and other agencies (such as the USEPA, Delaware River Basin Commission, Food and Drug Administration); and administering a shellfish resource recovery program;**

[6. Division of Solid Waste Management, which contains the following subunits:

i. Engineering, which reviews permit applications for energy recovery facilities, large-scale municipal solid waste compost projects, new and expanded landfills, landfill disruptions, transfer stations, small-scale incinerators, materials recovery facilities, vegetative compost facilities, and recycling centers; reviews and approves closure plans for landfills; and approves the use of funds from the Sanitary Landfill Facility Contingency Fund (except for the payment of claims against the Fund, which is handled by the Environmental Claims Administration under the Assistant Commissioner for Site Remediation);

ii. Recycling and Planning, which administers statewide solid waste planning programs, and coordinates the county solid waste planning process; plans source reduction, recycling and market development activities; plans for special waste materials such as medical waste, contaminated soils, and asbestos; and administers statewide sludge management planning and policy development;

iii. Investigation and Enforcement, which administers a screening program to prevent persons with known criminal records, habits or associations from obtaining a permit to collect, transport, treat, store or dispose of solid waste; inspects permitted solid waste facilities, investigates unpermitted activities, and otherwise enforces solid waste statutes and regulations;

iv. Economic Regulation, which oversees the tariffs and rates charged in New Jersey for solid waste collection and disposal; performs staff analysis for Departmental approval for mergers and acquisitions, bulk sales, and certain debt transactions in the solid waste industry; issues registrations to solid waste haulers, haulage vehicles and facilities, as well as licenses to solid waste utilities; and coordinates the billing, collecting and reporting for the division's fee programs;

v. Finance and Management, which administers the Department's solid waste financial assistance programs, and the Division's research contracts personnel, budget, case management, management information systems, and physical plant; and

vi. Communication Coordination, which coordinates the division's research programs, regulation development, legislative review and communications; and]

[7.]**6.** Division of Environmental Safety, Health and Analytical Programs, which contains the following subunits:

i. Laboratories and Quality Assurance, which develops and administers the Department's quality assurance policies and procedures; administers the laboratory certification program; administers the Department's analytical services agreements; inspects laboratories; and assists the Department's laboratories in environmental, chemical and analytical research;

ii. Pesticide Control, which enforces laws and regulations regarding pesticides; investigates and conducts inspections to ensure that pesticides are used safely and properly; administers certification examinations; registers pesticide applicators, dealers, businesses and products; performs technical evaluations and environmental monitoring; and maintains and supports data management needs;

iii. Radiation Protection, which licenses users of radioactive materials; addresses radioactively contaminated sites; assesses exposure to non-ionizing radiation; administers the radon program and certifies radon testing and mitigation firms; maintains the environmental surveillance for nuclear power plants and serves as the lead State agency for emergencies at nuclear facilities; and registers x-ray producing machines and licenses radiological technologists; and

iv. Release Prevention, which gathers information on the use, storage and release of toxic chemicals to the environment; identifies companies that handle extraordinarily hazardous substances and works to ensure that procedures are in place to prevent the occurrence of devastating accidental chemical releases; and works to reduce the possibility of spills of hazardous substances, and to mitigate the consequences of spills that do occur[.]; **and**

7. The Office of Innovative Technology and Marketing Development, which is responsible for developing an environmental management scheme designed to create an industrial policy that promotes the growth and use of green technologies for New Jersey. The office uses environmental protection as a tool for economic development where opportunities exist and are appropriate.

[(i)]**(l)** The Assistant Commissioner for Site Remediation directly supervises the following organizational units:

1. The Division of Publicly Funded Site Remediation, which includes units responsible for implementing and monitoring cleanup plans at sites being remediated with public funds; conducting remedial activities for contaminated sites where public funds are being expended; overseeing the remediation of sites that require ground water dischargers by private parties; and providing contracting, program development, geologic, technical and scientific support to the Department's site remediation programs.

2. The Division of Responsible Party Site Remediation, which includes units responsible for evaluating sites to determine the existence of contamination; overseeing the cleanup of major contaminated waste sites as conducted by responsible parties; implementing the [Environmental Cleanup Responsibility Act] **Industrial Site Recovery Act** and the Underground Storage of Hazardous Substances Act; undertaking emergency activities related to discharges of hazardous substances and wastes; and developing and maintaining a master list of contaminated waste sites in the State; and

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3. The Environmental Claims Administration, which administers the New Jersey Spill Compensation Fund to provide compensation to individuals and businesses that have suffered damages from the discharge of petroleum products or other hazardous substances, and processes claims against the Sanitary Landfill Facility Contingency fund for damages resulting from the operation or closure of a sanitary landfill.

[(j) The Department also includes the following organizational units:

1. Communications, which includes the Department's Public Information Office; monitors and supports public participation activities throughout the Department; provides editorial and design guidance to the Department in producing publications; provides centralized communications support within the Department and to other State, local, county and regional agencies; and provides writing and graphic arts services for the Department; and

2. Legislative and Intergovernmental Affairs, which tracks State and Federal legislation and coordinates development of the Department's positions and testimony on legislation; serves as a liaison with local governments; and coordinates State and local environmental protection activities through technical and financial assistance to municipal environmental commissions.]

[(k)]**(m)** Persons seeking information from the Department may contact the appropriate program listed above. In addition, the following sources of information are available:

1. To inspect, copy or obtain a copy of any public record required to be made available under N.J.S.A. 47:1A-1, Examination and Copies of Public Records, please contact:

Department of Environmental Protection [and Energy]
Office of Legal Affairs
Attention: Public Records Requests
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

2. Publications, press releases, notices of public hearings and other forums, [proposed and adopted rules and regulations,] scientific studies, and a variety of other information is available at the [DEPE] **DEP** Public Access Center, 401 East State Street, 1st Floor, Trenton, New Jersey. Besides visiting the Public Access Center in person weekdays from 9:00 A.M. to 5:00 P.M., the public may make inquiries by calling [(609) 777-DEPE] **(609) 777-DEP3**, or by writing the center at:

Public Access Center
Department of Environmental Protection [and Energy]
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

3. To obtain information concerning the types of permits required for a project, timing of permit reviews, and instructions for completing permit applications, please contact:

Office of Permit Information and Assistance
Department of Environmental Protection [and Energy]
401 East State Street
CN 401
Trenton, New Jersey 08625-0401

4. The [DEPE] **DEP** Bulletin is an information service provided by the Department. In compliance with the Rules and Regulations Governing 90-Day Construction Permits (N.J.A.C. 7:1C), this semi-monthly publication contains a list of construction permit applications recently filed or acted upon by the Department. Using the [DEPE] **DEP** Bulletin, interested persons can determine the status of Coastal Area Facility Review Act (CAFRA) permits, Federal Consistency Activity permits, Freshwater Wetlands Individual and Statewide General permits, Open Water Fill permits, Stream Encroachment permits, Tidal Wetlands permits, Waterfront Development permits, and Treatment Works Approvals. The [DEPE] **DEP** Bulletin also includes a calendar of events of interest, a schedule of public hearings (which, however, does not constitute an official notice of a hearing), and a list of Environmental Impact Statements acted upon. Persons desiring to [be included on the mailing list for the DEPE] **subscribe to the DEP** Bulletin should contact:

Department of Environmental Protection [and Energy]
Documents Distribution Center
CN 402
Trenton, New Jersey 08625-0402
(609) 292-1553

5. Subpoenas seeking the production of Department records and/or testimony from Department employees shall be served upon the Department at the following address:

Department of Environmental Protection
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

7:1-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

["Appellant" means a person requesting an appeal pursuant to N.J.A.C. 7:1-2.2.]

. . .

"Department" means the New Jersey Department of Environmental Protection [and Energy].

. . .

["Permit decision" means a decision of the Department or any organizational unit to issue or to deny a permit.

"Third party" means, with respect to any permit decision, any person other than the applicant for the permit.]

(a)

DIVISION OF ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Discharges of Petroleum and Other Hazardous Substances

Proposed Amendments: N.J.A.C. 7:1E-1.1, 1.5-1.8, 1.11, 2.1, 2.2, 2.4, 2.5, 2.7, 2.10, 3.2, 4.2, 4.3, 4.5, 4.6, 4.7, 4.10, 4.11, 5.2, 5.8, 6.3, 6.8 and Appendix B

Proposed New Rule: Appendix C

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:10-23.11, 58:10-46 to 50, and 13:1K.

DEP Docket Number: 27-95-05/271.

Proposal Number: PRN 1995-366.

A **public hearing** concerning this proposal will be held on Monday, July 24, 1995, at 10:00 A.M. at:

Public Hearing Room
Department of Environmental Protection
1st Floor, 401 East State Street
Trenton, New Jersey

Submit written comments by August 4, 1995 to:

Janis E. Hoagland, Esq.
Attn: DEP Docket Number 27-95-05/271
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

N.J.A.C. 7:1E (the rules), as they currently exist, were adopted on August 12, 1991, as a result of the July 1990 amendments to the Spill Compensation and Control Act (the Spill Act or the Act) (N.J.S.A. 58:10-23.11a et seq.). The Spill Act provides stringent standards for discharge prevention and emergency response requirements for facilities storing or handling hazardous substances. N.J.A.C. 7:1E as it existed prior to August 12, 1991, was repealed in its entirety and the currently existing form of the rules was adopted in its place.

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Implementation of N.J.A.C. 7:1E since 1991 has led to the understanding that certain requirements in the rules need to be amended. In order to make the rules more understandable, less of a burden on the regulated community and on the Department of Environmental Protection (the Department), and to further coordination between programs within the Department, these amendments are being proposed. The amendments will be explained in the order in which they appear in the rules.

As a part of the preparation of the amendments and this proposal, notice that an interested party draft was available for review and comment appeared in the June 21, 1993, New Jersey Register at 25 N.J.R. 2636(a). A public meeting was held on July 23, 1993, at which time the interested party draft was discussed. In addition, 23 written comments were submitted to the Department. The majority of the comment received was concerned with the establishment of de minimis thresholds for mixtures to be considered hazardous and for reporting of discharges. The Department solicited comment on the feasibility of establishing a de minimis concentration below which mixtures would not be considered hazardous. While the Department is not proposing a general de minimis concentration, changes to N.J.A.C. 7:1E-4.6 address two areas of particular concern, metals and consumer products. These changes are thoroughly discussed below in the section dealing with the proposed revisions to N.J.A.C. 7:1E-4.6. The Department is not establishing a de minimis at this time for discharge reporting because there is no simple means of dealing with the wide variety of hazardous substances and the numerous circumstances under which they can be discharged. However, the Department will continue to consider the de minimis issue in regard to both reporting of discharges and inclusion as a hazardous substance.

The other major area of comment concerned the changes recommended for discharge notification and confirmation reporting. Based on comments received, the Department dropped a proposed exemption from reporting of discharges cleaned up within 15 minutes. Instead, the scope of discharges requiring confirmation reports was reduced by amending N.J.A.C. 7:1E-5.8(c), recodified from subsection (b). Other minor comments were received, concerning areas such as the definitions (N.J.A.C. 7:1E-1.6) and the high level alarm requirement (N.J.A.C. 7:1E-2.2(d)), some of which have been incorporated into this proposal and others of which are still under consideration.

In addition, the Department has developed Geographic Information System (GIS) standards for geographic based information submitted to the Department. The general site plans, environmentally sensitive areas maps, drainage and land use maps, and other geographical information submittals required under these rules, are subject to these GIS standards.

Subchapter 1. General Provisions

N.J.A.C. 7:1E-1.1, Scope, is being amended to remove the reference to Federal and State permits, since the definition of "discharge" already excepts discharges pursuant to valid permits. The phrase regarding "the conditions of" a valid Federal or State permit has been moved from N.J.A.C. 7:1E-1.1 to the definition of "discharge" and is thus made applicable to all circumstances where the term is used in the rules.

In N.J.A.C. 7:1E-1.5, State non-liability, subsection (b) is being amended to state that "any person responsible for a discharge" rather than "the person responsible for a discharge" may be held liable. In many cases, more than one person can be held responsible for a discharge. While the determination of responsibility is beyond the scope of these rules, this change makes it clear that more than one person may be held responsible.

Several definitions in N.J.A.C. 7:1E-1.6, Definitions, are being amended. The definition of "cleanup and removal activities" is being revised to more clearly indicate that the activities covered by that definition for the purposes of these rules are physical actions taken to prevent or mitigate discharges. This is particularly important in N.J.A.C. 7:1E-4.2, which requires the registration of discharge cleanup organizations. The organizations which are required to register are those that have equipment and personnel which will be engaged in physical measures to prevent or mitigate discharges. This includes equipment such as booms, vacuum trucks, and absorbent materials, and personnel trained to deal with hazardous material situations. Contractors performing planning activities and other office work, who do not have equipment or personnel to be utilized in actual cleanup activities, are not meant to be included in the group of organizations required to register. The registration allows for owners or operators of major facilities to include the name of a registered contractor with whom they have a contract in their discharge cleanup and removal (DCR) plans rather than include a list of said contractor's equipment and personnel. The Department has already been provided with such an equipment and personnel list by means of the contractor's registration.

When the confidentiality provisions in N.J.A.C. 7:1E-7 through 10 were adopted in March 1992, a definition of "contractor" was incorporated into N.J.A.C. 7:1E-1.6. However, the term "contractor" is used not only in the confidentiality provisions, but also in N.J.A.C. 7:1E-2.12, which deals with training. The definition currently contained in the rules is too narrow in scope to be applicable to all sections of the rules. Contractors may perform work for the Department or for a major facility. The definition has been amended to reflect this.

The proposed revision to the definition of "discharge" fully incorporates the phrase "unless pursuant to and in compliance with the conditions of a valid and effective Federal or State permit." The phrase has been moved from N.J.A.C. 7:1E-1.1 to the definition of "discharge" and is thus made applicable to all circumstances where the term is used in the rules.

There has been some confusion expressed by the regulated community about what constitutes a major facility. Therefore, two minor changes are being proposed in the definition of "major facility." The first is to change "owned or operated" to "owned and/or operated." Questions have arisen when property is either leased from several different persons and has one operating facility, or when the property is owned by one person and one or more other persons lease property and operate separate facilities. The Department can hold all owners or operators responsible for the preparation and submission of plans. However, when two or more operators with separate budgets and management occupy a piece of property having one owner, each operator will be evaluated individually to determine applicability of the discharge prevention rules. Similarly, if an operator leases property from several owners, the whole area under the operator's management will be considered as a single facility for application of the rules.

The second change to the definition of "major facility" is to add the term "aggregate" in the phrase "total aggregate, combined storage capacity." Some people have mistakenly interpreted the phrase to mean that the total storage capacity for a single hazardous substance must exceed the established thresholds before a facility is considered to be a major facility. The actual case is that the capacities for storing all types of hazardous substances at the facility are to be added together to obtain the total to which the threshold quantities are applied. The addition of the word "aggregate" makes this clear.

The definitions of "quality assurance" and "quality control" are being deleted from the rules since the terms are no longer used as a result of proposed changes in N.J.A.C. 7:1E-5.8. The definition of "tertiary watershed" is being deleted from the rules as a result of proposed changes to N.J.A.C. 7:1E-4.10(a)2.

A definition of "regulated portion" is being proposed to describe the areas of a major facility for which, if a discharge occurs, a written confirmation report must be submitted under a proposed amendment to N.J.A.C. 7:1E-5.8. The purpose of written confirmation reports in the case of major facilities is to ensure that owners or operators have adequate discharge prevention, containment and countermeasure (DPCC) and DCR plans which are properly implemented in the event of a discharge. However, discharges can occur in portions of a facility which are not covered by the DPCC and DCR plans, such as from cars in a parking lot. In order to reduce the burden on the regulated community and the Department of submitting confirmation reports on all types of discharges, the regulated portion of the facility is being defined. Thus, a written confirmation report following a discharge is required only for those areas of the facility addressed in the DPCC and DCR plans.

The definition of "storage capacity" is being proposed for change. In 1992, an amendment to the Spill Act changed the definition of a "major facility" at in N.J.S.A. 58:10-23.11b1. The change states "In determining whether a facility is a major facility for the purposes of P.L. 1976, c.141, any underground storage tank at the facility used solely to store heating oil for on-site consumption shall not be considered when determining the combined storage capacity of the facility." This exemption is being incorporated into this definition.

A definition of the term "substantial modification" is being added. Members of the regulated community have indicated that they are uncertain as to what requires 60 days notice to the Department under N.J.A.C. 7:1E-4.9. Therefore, this definition is being added to make it clear what types of actions taken at the facility will be considered substantial modifications and what will need to be reported to the Department. Examples of a substantial modification include storing hazardous substances in a tank which previously contained non-hazardous substances, changing a tank's function from storage to process, storing corrosives in a tank which previously contained non-corrosives, increasing the hours of operation from eight hours a day to 24 hours a day, and changing the type of hazardous substances transferred in a loading/unloading area.

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The definition of "transfer" is being amended so that it better reflects the use of that term in these rules. The definition was originally taken directly from the Spill Act, where it is used to determine who will be subject to the Spill Tax on transfers. The term is used differently in N.J.A.C. 7:1E, and it has been modified to reflect this. A transfer for the purposes of these rules occurs when there is onloading or offloading that will result in the hazardous substance either entering or leaving a major facility, regardless of the final destination of the hazardous substance.

N.J.A.C. 7:1E-1.7, Hazardous substances, which delineates what is to be considered a hazardous substance for the purposes of these rules, is being revised to clarify that petroleum and petroleum products are themselves hazardous substances.

Several amendments at N.J.A.C. 7:1E-1.8, Environmentally sensitive areas, are being proposed. The reference to various types of trout waters in N.J.A.C. 7:1E-1.8(a)1 is being deleted. This information, along with other important environmental areas associated with water bodies, is adequately covered by other categories listed, such as prime fishing areas. The remainder of N.J.A.C. 7:1E-1.8(a)1 is being revised to properly reference the revised Coastal Zone Management Rules, N.J.A.C. 7:7E, and to include "reservoirs," as defined at N.J.A.C. 7:7E-4.1, as surface waters.

The reference for sources of water supply at N.J.A.C. 7:1E-1.8(a)2 include items such as potable water treatment plants and the pipes which carry potable water to consumers. These are not critical areas to be protected from a discharge. The actual source(s) of the water that is being purveyed is what must be protected. Therefore, the reference is being changed to identify the surface waters and aquifers utilized by potable water systems as the environmentally sensitive area.

In addition, a reference to N.J.A.C. 7:7E-3.29 in N.J.A.C. 7:1E-1.8(a)6 is being deleted because this section of N.J.A.C. 7:7E has been deleted. A cross-reference in N.J.A.C. 7:1E-1.8(a)13 is being corrected since shellfish harvesting waters now are defined in N.J.A.C. 7:9B-1.4, recodified from N.J.A.C. 7:9-4.4. Also, an incorrect semicolon in N.J.A.C. 7:1E-1.8(a)15 is being changed to a comma.

There has been some confusion expressed by the regulated community concerning N.J.A.C. 7:1E-1.11(b). There is uncertainty as to which items can be scheduled for upgrading to meet the standards of this chapter. The Department's intent has always been to allow owners or operators of major facilities time to upgrade to the standards for equipment and procedures contained in subchapter 2, other than initial integrity testing. In order to make this more explicit, the phrase "these rules" is being replaced with "N.J.A.C. 7:1E-2, excluding the requirements of N.J.A.C. 7:1E-2.2(a)4 and 2.2(a)5."

Subchapter 2. Prevention and Control of Discharges at Major Facilities

The scope section of subchapter 2, N.J.A.C. 7:1E-2.1, is being revised by the addition of the phrase "the owner or operator of." This is necessary because the Department will hold a person not a facility responsible for meeting the standards established in this subchapter.

The address given at N.J.A.C. 7:1E-2.2(a)5, as well as at all subsequent instances, is being revised to reflect the revised call number (CN) of the Bureau of Discharge Prevention.

The wording of N.J.A.C. 7:1E-2.2(d) has been interpreted by the regulated community in several different ways, most of which are not the way intended. In order to correct this misunderstanding, this requirement is being reworded. The intent is to allow facilities with small tanks to have such tanks attended at all times during filling operations rather than require the installation of high level alarms and a back-up system. The exemption for aboveground tanks of 2,000 gallons or less is being proposed as a separate subsection at N.J.A.C. 7:1E-2.2(e). Subsequent subsections are being recodified accordingly.

N.J.A.C. 7:1E-2.2(g), recodified from N.J.A.C. 7:1E-2.2(f), and N.J.A.C. 7:1E-2.4(b) are being revised to include the phrase "designed and built" in reference to secondary containment. While it is the intention of the rules that all areas where hazardous substances are present have secondary containment, the rules do not explicitly state that secondary containment must be provided. The addition of this phrase will ensure that the required secondary containment is in place.

The other change proposed at N.J.A.C. 7:1E-2.2 regarding storage has to do with areas in which containers are stored. All types of containers are included in the definition of storage capacity and need to be included in the planning and protection measures taken by owners or operators of major facilities. Drums are not the only form of storage aside from above and underground storage tanks. The phrase "and other" is being added at N.J.A.C. 7:1E-2.2(h), recodified from N.J.A.C. 7:1E-2.2(g), to ensure that owners or operators include in their DPCC plans areas where solids, tote bins, pails, or other types of storage occur. The phrase "designed and built" in reference to secondary containment is being added here for the reasons stated above.

In N.J.A.C. 7:1E-2.5(a), a cross-reference to the requirements for secondary containment and diversion systems contained in N.J.A.C. 7:1E-2.6 is being proposed as an addition. These are the standards that are applied by the Department, so they should be referenced here. It is also being made clear that secondary containment must be designed and built, rather than "engineered," in accordance with these standards.

There has been some confusion about N.J.A.C. 7:1E-2.7(i) in regard to when a transfer should not be started, and if started, when it should cease. In order to clarify when a transfer should be terminated, the wording of N.J.A.C. 7:1E-2.7(i) is being revised to read "Transfer operations shall not commence, or if commenced shall be discontinued immediately, upon detection of any of the following conditions . . ." The timeframe envisioned is now clear. However, in regard to weather conditions, there has been additional confusion regarding how far in advance of a transfer the owner or operator should be monitoring the weather forecasts in order to hold off on transfers. Therefore, N.J.A.C. 7:1E-2.7(i)1 is being revised to indicate that if a weather forecast made within 12 hours of the commencement of a transfer indicates that the weather will become unfavorable within the timeframe it will take to complete the transfer, the transfer should not begin.

The final changes proposed for subchapter 2 are in N.J.A.C. 7:1E-2.10(a)2. In that section the phrase "which are not impermeable" applies only to the secondary containment and diversion systems for aboveground storage tanks which meet the alternate requirements in N.J.A.C. 7:1E-2.6(c)3. All process areas must be visually examined daily. Therefore, the word "all" is being added before "process areas," and the entire phrase is being moved to the end of the section. Additionally, the inspection of diversion systems has been proposed for addition to make this paragraph consistent with the requirements in N.J.A.C. 7:1E-2.6. These amendments will clarify what areas are covered by this requirement.

Subchapter 3. Transmission Pipelines

N.J.A.C. 7:1E-3.2(a) is being revised. The first revision makes the rule consistent with the Hazardous Liquids Transportation Act (N.J.S.A. 58:10-46 et seq.) which requires registration of transmission pipelines every five years. The second change incorporates the Department's requirement that geographic information be submitted as digital maps meeting the standards contained in the document "Mapping and Digital Data Standards," incorporated into these rules as Appendix C. The maps showing the location of transmission pipelines, submitted pursuant to N.J.A.C. 7:1E-3.2(a)6, will now be required to meet the GIS standards.

Subchapter 4. Registrations and Plans

The Department is proposing amendments regarding the information to be submitted as part of the DPCC plan. The requirements for a general site plan contained in N.J.A.C. 7:1E-4.3(b)4 are being modified. When the Department incorporated in this requirement a range of scales that could be used to delineate the facility's site, it was assumed that the owner or operator would choose a scale appropriate to the size and complexity of the facility. However, the Department has found that this has not always been the case. Site plans for small sized facilities of less than eight acres are suitable for the low end of the range, one inch equals 30 feet. Large facilities of 100 acres or more would use the high end of the range, one inch equals 200 feet. However, the Department has received site plans for facilities of over 30 acres executed at one inch equals 20 feet. This is not appropriate. Such a site plan uses several sheets and is cumbersome and difficult to read. The spatial relationships between different parts of the facility are difficult to determine from such a site plan. While the Department does not want to limit the regulated community's choices, some parameter must be established for the site plan. It is being proposed that the general site plan be prepared at a scale that is appropriate to the size of the facility. The Department believes that establishing this parameter will allow the most flexibility. Also, because the site plan is geographical information, it must meet the standards in Appendix C, "Mapping and Digital Data Standards," and be submitted in a digital format.

An important piece of information that the Department would like to see on the drainage and land use (DLU) maps submitted with DPCC plans is the direction of surface water runoff from the site, which is being proposed for addition at N.J.A.C. 7:1E-4.3(b)5. The DLU maps are required to show major sewers, storm sewers and watercourses into which runoff can occur. If the direction of surface water runoff is not delineated, then the Department cannot determine if the necessary sewers and watercourses have been delineated. In addition, N.J.A.C. 7:1E-4.3(b)5 has been changed to be consistent with the proposed deletion of the word "all" at N.J.A.C. 7:1E-4.10(b)3 (see below) so

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that only supply wells within the range of mapping and for which information can be obtained from the Department need be mapped.

During its review of the over 400 plans that have been submitted under the rules to date, the Department has determined that additional items should be included in the DPCC plan. These items are being proposed for addition to the list of requirements in N.J.A.C. 7:1E-4.3(d). The description of storage areas at N.J.A.C. 7:1E-4.3(d)1 is being expanded to make it clear that the Department needs information on the size of storage tanks, what the storage tanks hold, and what type of overfill protection is provided. There are requirements at N.J.A.C. 7:1E-2.2 related to all of these items, and the DPCC plan must address them. The proposed inclusion of a cross-reference to N.J.A.C. 7:1E-2.2 will make it clear that these items should be part of the description of storage areas.

One area not addressed at all in the current DPCC plan requirements is in-facility pipes. The Department believes that it is important that owners or operators of major facilities describe how they mark their in-facility pipes so that they know what hazardous substances are transported through the pipes and that they also describe how they warn vehicles about possible collisions with overhead pipes. These standards must be met, and the plan will be more complete if it describes how this is done. Therefore, the Department is proposing to add a requirement for such a description at N.J.A.C. 7:1E-4.3(d)3.

Currently, only the lighting in use at marine transfer areas must be described in the DPCC plan. A description of the actual marine transfer area and of any booming required to be performed is being proposed as an addition at recodified N.J.A.C. 7:1E-4.3(d)5. Docks and associated areas used for marine transfers must appear on the site plan, so a short description of the area would be useful. N.J.A.C. 7:1E-2.7 delineates those instances for which a boom must be deployed prior to a transfer commencing. A description of what materials are transferred at the facility and the requisite booming scenario for each will assure the Department that the owner or operator knows his or her responsibility in regard to booming.

In order to be consistent with a cross-reference added to N.J.A.C. 7:1E-1.11(b), N.J.A.C. 7:1E-4.3(e) is being changed to indicate that items in subchapter 2, except for initial integrity testing, are the only ones that can appear on a schedule of upgrades.

Several provisions of N.J.A.C. 7:1E-4.5, Financial responsibility, are being proposed for amendment. The first is N.J.A.C. 7:1E-4.5(a), where the phrase "taking corrective action resulting from the discharge of a hazardous substance" is being replaced by "cleanup and removal activities." The current rules do not define what such a "corrective action" was to entail. However, it has always been intended that cleanup and removal activities are the necessary corrective action. "Cleanup and removal activities" is a defined term in N.J.A.C. 7:1E-1.6.

The section concerning the demonstration of financial responsibility through liability insurance, N.J.A.C. 7:1E-4.5(l), is being amended to allow cancellation of a policy on 10 days' notice for nonpayment of premium or material misrepresentation, rather than the 60 days' notice required for any other cause for cancellation. In discussions with members of the insurance industry, the Department has received indications that many insurers are reluctant to enter the market in New Jersey because of concerns that they might be forced to pay claims without ever having received any premiums or where the insured has made a material misrepresentation. It was never the intent of the Department to require the insurance industry to unfairly undertake risks without rightful compensation. Thus, although the Department is concerned about the adequacy of the 10 days' notice of cancellation in terms of finding alternative financial assurance after cancellation for nonpayment, it does not want this requirement to have a negative influence on the availability of liability insurance in New Jersey.

N.J.A.C. 7:1E-4.5(q) and (r) are being proposed for deletion. Inability to demonstrate financial responsibility will be dealt with as a conditional approval. Therefore, these provisions are being modified and placed in N.J.A.C. 7:1E-4.7.

Under the proposed new subsection at N.J.A.C. 7:1E-4.6(c), a major facility which stores certain forms of metals or consumer products, and which would not be a major facility if the storage capacity of these substances were excluded, will not be required to prepare DPCC and DCR plans. This exclusion does not exempt these facilities from any other section of this chapter.

Because Appendix A to N.J.A.C. 7:1E contains broad categories such as nickel and nickel compounds, copper and copper compounds, and zinc and zinc compounds, almost any metal object could be considered hazardous under the current rules. Requiring DPCC and DCR plans from facilities which are major facilities only if metal pipe, coins, sheet metal, and other such manufactured items are included in determining storage capacity, was never intended by the Department. In order to exempt such major facilities from the requirement of preparing and submitting DPCC and DCR plans, solid forms of metals that have at least one dimensional measurement greater than 100 micrometers (0.004 inches) are being excluded in determining aggregate storage capacity. Facilities which store metal dusts, fumes and powders, and compounds specifically listed in Appendix A, so that the aggregate storage capacity makes them a major facility, must still submit DPCC and DCR plans.

Another aspect of Appendix A is that it establishes very few de minimis concentrations below which mixtures will not be considered hazardous. Because of this, many products meant for human use, such as foods containing artificial flavors or colors, could be considered hazardous substances. However, such products have undergone testing and use by biological organisms and have been determined to be safe when used appropriately. Therefore, consumer products or their components in concentrations meant for human use and considered safe for this purpose by the United States Food and Drug Administration also are being excluded in determining aggregate storage capacity under N.J.A.C. 7:1E-4.6(c). Products such as cosmetics, perfumes, toothpaste, medication and so on may be included in this category when they are packaged in their final form.

Because of the changes being proposed for DPCC plans, those plans that have already been submitted and approved will not be in compliance with the rules once the changes are adopted. Therefore, under the proposed new subsection N.J.A.C. 7:1E-4.6(d), the owners or operators of facilities for which DPCC and DCR plans have been approved will have until the renewal date to incorporate any changes necessitated by duly adopted amendments to the rules. This will give owners and operators the time needed to evaluate what changes are required in their DPCC and DCR plans and to incorporate those changes into their plans. It will also obviate the need for the Department to review hundreds of amended plans in a short time, as the amended plans will be submitted over a two to three year period. This time period will also apply to any maps which need to be redone and submitted in digital form, in compliance with the standards in proposed Appendix C.

The Department has determined that it will be more efficient and easier for both the regulated community and the Department if only one copy of the plan is initially submitted for approval. N.J.A.C. 7:1E-4.6(i) (recodified subsection (g)) is, therefore, being revised to require that one copy of the DPCC or DCR plan be submitted for approval, and that a second copy of the approved plan be submitted within 30 days after approval. It is being made clear through the proposed inclusion of the phrase "which must include an original certification pursuant to N.J.A.C. 7:1E-4.11" in this subsection that DPCC and DCR plans must be submitted with an original signature. Copies of signatures are not acceptable for the certification.

N.J.A.C. 7:1E-4.7 contains two proposed revisions. The first corrects the citation in subsection (a) for treatment works approval. The second is to include conditional approval for plans submitted by owners or operators of facilities unable to demonstrate financial responsibility. The requirements that the owner or operator must meet to be granted a conditional approval are enumerated in N.J.A.C. 7:1E-4.7(e), which has been recodified with changes from N.J.A.C. 7:1E-4.5(q). N.J.A.C. 7:1E-4.7(e)2 concerning an alternative minimum amount of financial responsibility, is the recodification of N.J.A.C. 7:1E-4.5(r) with changes. New subsection N.J.A.C. 7:1E-4.7(f) provides that an expiration date for this conditional approval will be established on a case-by-case basis.

In order to fully implement the Department's GIS standards for geographically based information submitted to the Department, N.J.A.C. 7:1E-4.10(a) is being revised. This subsection contains the general standards applicable to maps that must accompany the DPCC and DCR plans. All of these standards, except that establishing the scale to be used, are being deleted and replaced with a reference to the Department's GIS standards in Appendix C, proposed for addition to these rules.

It has become apparent from the Department's review of the plans submitted under these rules to date that there is some confusion as to what is required to be mapped on the DLU map. It has always been the intent of the Department that all the land use categories specifically listed under N.J.A.C. 7:1E-4.10(b)1 be included on the DLU map, not just the broad categories listed as headings. Therefore, to clarify this provision, the listing is being recodified to give all categories the same level of importance. In the case of urban lands, this means that additional categories must be added. Not all urban lands fall into the specific categories of "residential," "transportation/communication/utilities," "industrial and commercial complexes," "recreational land and parks," "schools" or "hospitals and nursing care facilities." The additions are "industrial," which covers heavy industry, and

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"other urban lands not specified above," for areas which are urban but cannot be classified as one of the specifically listed types of urban lands.

The other changes which the Department is proposing to the DLU map requirements deal with wells. N.J.A.C. 7:1E-4.10(b)3 currently requires that "all water supply wells" must be delineated. The Department has found this to be a very costly and difficult undertaking. Therefore, under the proposed change deleting the modifier "all," the wells that must be included on the DLU map are those for which the Department has information readily available in such sources as the Mapping Guidance Document, which is published by, and available from, the Department. Also, to be consistent with the requirements for the DLU map at N.J.A.C. 7:1E-4.3(b)5, the locations of monitoring wells owned or operated by the facility are proposed for addition to N.J.A.C. 7:1E-4.10(b)3 as well.

The extent of mapping required for the topographical maps showing environmentally sensitive areas (ESA) is being clarified at N.J.A.C. 7:1E-4.10(c). Reference to the 100 year floodplain is being deleted from N.J.A.C. 7:1E-4.10(c)1 as repetitive since N.J.A.C. 7:1E-4.10(c)2i, ii and iii already require that all floodprone areas be included in the extent of mapping. The reference to the tertiary watershed is being removed because the criteria for determining the maximum area of impact of a possible discharge are defined in N.J.A.C. 7:1E-4.10(c) and the extent of the tertiary watershed is not important for this determination. Paragraph (c)2 is being reorganized to include the factors to be considered when determining the maximum area of impact. These factors are to be used for both the 48 hour and the concentration based scenarios at N.J.A.C. 7:1E-4.10(c)2i and ii, respectively.

The DLU and ESA maps will now be required to be submitted in a digital format that meets the standards contained in Appendix C. The Department has determined that it will be more efficient and easier for both the regulated community and the Department if only one paper copy of the DLU and ESA maps are initially submitted for approval. N.J.A.C. 7:1E-4.10(d) is, therefore, being revised to require that one paper copy of these maps be submitted with the DPCC or DCR plan for approval, and that a second paper copy and the digital copy of the final approved maps be submitted within 30 days after approval. This should reduce costs and make it easier to make any changes to the maps needed for approval.

The certification required under N.J.A.C. 7:1E-4.11(a) is being revised. The reference to direct knowledge of the person with overall responsibility is being removed. In larger companies, the highest ranking person with overall responsibility for the information contained in the DPCC and DCR plans and other documents is often too far removed from daily operations to have direct knowledge. The language of the required certification in subsection (a) is also being revised to reflect this change. The phrase "the possibility of" has been added to make the certification in subsection (a) consistent with the certification in subsection (b) and to clearly indicate the potential for fines or imprisonment.

At N.J.A.C. 7:1E-4.11(c), the Department also is proposing amendments to clarify who is required to sign the certification in (b) in order to address certification by government entities.

Subchapter 5. Discharge Notification, Response and Reporting

The first change proposed in N.J.A.C. 7:1E-5 is to reword N.J.A.C. 7:1E-5.2 to require that **all** historical discharges be reported. There are two reasons for this change. First, the current definition of "discharge," found in N.J.A.C. 7:1E-1.6, is much different from the definition used prior to September 12, 1991, the effective date of the current rules. Second, many substances which are defined as hazardous substances at N.J.A.C. 7:1E-1.6 were not defined as such prior to the effective date of the current rules. N.J.A.C. 7:1E-5.2(a) and (b) are being amended to include as a historical discharge any discharge which occurred in the time period prior to the operative date of these rules, since the Department needs to know of such discharges to help protect human health and the environment. In addition, N.J.A.C. 7:1E-5.2(c) has been added to allow historical discharges which are discovered during a State or Federally required investigation or cleanup to be reported as a part of the periodic progress report, submitted during the investigation or cleanup. This will allow for smooth implementation of the investigation or cleanup since it will not have to be interrupted to report discovery of another historical discharge.

All discharges which occur from transmission pipelines must be confirmed by written report to the Department; however, for major facilities, only discharges from a regulated portion of the facility need be confirmed in writing under amended N.J.A.C. 7:1E-5.8(a). Even if the owner or operator of a major facility or transmission pipeline failed to immediately notify the Department of a discharge as required by N.J.A.C. 7:1E-5.3, the owner or operator is still required to submit a written confirmation report under a proposed change to this section. Records concerning discharges at non-major facilities or from the unregulated portion of a major facility must be kept on site for possible review by the Department pursuant to N.J.A.C. 7:26E, under proposed new N.J.A.C. 7:1E-5.8(b). Also, the requirement of submitting a written confirmation report for leak detection system malfunctions is being deleted from N.J.A.C. 7:1E-5.8(a) and (c)1, as recodified. Follow-up on leak detection system malfunctions is already addressed in N.J.A.C. 7:1E-5.5(c).

The amount of information required to be submitted as a part of the confirmation report under recodified N.J.A.C. 7:1E-5.8(c) is being reduced to make reporting and review of the information more effective and less burdensome for both the regulated community and the Department. Redundant information about the person required to submit a confirmation report and about corrective action taken as a result of the discharge is being deleted. In addition, N.J.A.C. 7:1E-5.8(c)5i, the word "site" has been proposed for deletion to clarify that an area map, rather than a site map, is needed. Also, this area map must be digital and meet the standards contained in Appendix C, "Mapping and Digital Data Standards." Recodified N.J.A.C. 7:1E-5.8(c)9 is being proposed for revision since proof of final disposal of cleaned up materials is frequently not available within the 30 days allowed for report submission. Recodified N.J.A.C. 7:1E-5.8(c)12 is being reworded so that sampling will be performed in accordance with the standards established by N.J.A.C. 7:26E-2, Technical Requirements for Site Remediation, and the results will be kept on site. Thus, N.J.A.C. 7:1E-5.8(c)16 is no longer needed and the terms "quality assurance" and "quality control" are no longer used in the rules. The result will be to reduce the quantity of paperwork submitted with many confirmation reports, while still keeping the information available when needed. Also, since only major facilities and transmission pipelines will be submitting written confirmation reports, the restrictive language "for major facilities" has been deleted from recodified N.J.A.C. 7:1E-5.8(c)13.

Subchapter 6. Civil Administrative Penalties and Requests for Adjudicatory Hearings

The provisions of N.J.A.C. 7:1E-6.3(b)2 are being added to clarify that a notice of civil administrative penalty assessment becomes a final order on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator if a hearing request is not made in a timely manner in accordance with N.J.A.C. 7:1E-6.4(a). In addition, paragraph (b)4, recodified from paragraph (b)3, is being amended to clarify that an adjudicatory hearing need not necessarily be conducted for an order to become final in a contested case. Subsection (i) is being added to provide the factors that may be considered in determining a settlement amount of any civil administrative penalty assessed pursuant to N.J.A.C. 7:1E-6.

The Department is proposing revisions throughout N.J.A.C. 7:1E-6.8(c), which contains specific civil administrative penalties imposed for specific violations of these rules, to reflect current principles of enforcement, to consolidate and clarify, and to emphasize penalty assessment reduction for certain offenses. The proposed changes will provide greater continuity for program and enforcement coordination.

In addition to the proposed general revision of the penalty amounts, some specific changes are being made. In N.J.A.C. 7:1E-6.8(c)1, changes to the multiplication factors are being proposed. For "cause of discharge," "operational" is being deleted because an "operational" cause was not defined in the rules and the effect on the penalty was neutral. Under "initiate response to discharge," the qualifiers are being deleted. The timeframes establish when the penalty may be increased or decreased, not a subjective determination of whether the response was, for example, "poor." The "area of impact" is being proposed for change to emphasize that the first line of defense against the spread of a discharge is to keep the discharge out of any water. Also, even though waters of the State may be within the boundaries of a facility, it is still important to keep a discharge from reaching such waters. To eliminate an overlap in "discharge history," it is proposed that the number of discharges in the second category be changed from 5 to 4. Finally, there is a proposed change to the footnote to indicate that the factors are applied only as applicable.

Two new penalty matrices are being proposed to clarify how penalties for initial integrity testing violations and late plan submission violations are determined. At N.J.A.C. 7:1E-6.8(c)2, the Department is proposing to differentiate between the penalties for failure to conduct initial integrity tests, including static head product tests, and the penalties established for failure to perform follow-up integrity tests and submit the results. The Department recognizes that some major facilities were not aware of the initial tank testing deadlines, even though the deadlines were clearly stated in the rules. To address this failure to perform the required tank testing, a matrix has been established to assess penalties in a fair and reasonable manner, recognizing

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that any penalties assessed will be a direct result of the facility's failure to meet deadlines set forth in the rules.

The proposed penalty matrix at N.J.A.C. 7:1E-6.8(c)2 for initial integrity testing assesses the penalty on a per tank basis and uses the tank size in gallons to arrive at the penalty assessment. For example, if a major facility had not tested two 2,500 gallon tanks, one 50,000 gallon tank and two 250,000 gallon tanks, the penalty would be assessed as follows: a $500.00 penalty for the two 2,500 gallon tanks ($250.00 penalty each), plus a $1,250 penalty for the one 50,000 gallon tank, plus a $15,000 penalty for the two 250,000 gallon tanks ($7,500 penalty each). The sum total of this penalty would be $16,750. Under the current rules, each tank not tested for initial integrity at a major facility could be subject to a $15,000 first offense penalty for a total of $75,000.

The matrix proposed at N.J.A.C. 7:1E-6.8(c)4 for assessing penalties for non-submission or late plan submission is based on the size of the facility and the regulatory deadline by which the facility was required to have submitted its DPCC and DCR plans. Under the existing rules, the first offense for failing to submit a plan results in a $20,000 penalty. The Department has proposed this matrix in an attempt to be more fair and reasonable, allowing for an assessment to be made as low as one-twentieth of the current first offense penalty, dependent on the facility's capacity for storing hazardous substances.

Appendix B. Financial Forms

Throughout Appendix B, Financial Forms, references to "corrective action" are being replaced with "cleanup and removal activities," as this is the phrase defined in N.J.A.C. 7:1E-1.6. The use of this defined phrase should remove any confusion about what activities are to be covered by financial responsibility.

Several other minor changes are being made. The phrase "arising from operating [name(s) and address(es) of facility(ies)]" is being added to the first paragraph of the letter from the chief financial officer. The Department has determined that this is necessary because some parent corporations which are not resident in New Jersey submit this letter for a subsidiary in New Jersey. In such cases, there is no indication in the letter for which New Jersey facility coverage is intended. Also, the letter may be prepared to cover multiple facilities when a parent corporation has several subsidiaries in New Jersey. By incorporating the names and addresses of the covered facilities into the letter, any confusion about which facilities are covered will be avoided.

Also in the letter from the chief financial officer, the language referring to Alternative II is being revised to indicate that it is to be used when either the owner or operator's or guarantor's bond rating or net working capital is used as the basis for self-insurance. In the language for a guarantee, the phrase "organized under the laws of the State of New Jersey" is being amended to "organized under the laws of the State of [name of state]." The Department has found that many parent corporations of New Jersey based companies are not incorporated in New Jersey. Therefore, the language in the guarantee cannot be used by them. It was not the intent of the Department to preclude corporations that are not incorporated in New Jersey from providing financial responsibility for their subsidiaries. Therefore, this change is being made.

Finally, the endorsement and certificate of insurance are being revised. The phrase "subject to public policy considerations" is being added to address the concerns of insurance providers in regard to intentional acts. The definition of a discharge includes intentional acts, but case law has generally relieved insurance providers from liability for intentional discharges by the insured. However, because some intentional acts causing a discharge, such as vandalism, are not similarly excluded from coverage, this phrase is being used to allow for consistency with case law distinguishing between covered and excluded discharges. As discussed previously in reference to N.J.A.C. 7:1E-4.5(1), a provision for cancellation for nonpayment of premium or material misrepresentation on 10 days' notice is being incorporated into the language of the endorsement and certificate. In addition, the insert for claims-made policies is being revised. In discussions with the insurance industry, the Department was informed that a six month reporting period attached to every policy leads to expensive, overlapping cover, if the policy is renewed from year to year. This reporting period incurs an additional charge and can make insurance too costly for small companies to afford. The reporting period is only necessary if the policy is canceled or not renewed, and a new policy does not have the same retroactive date as the canceled or unrenewed policy. In order to eliminate the overlap and reduce the cost of insurance, paragraph e in the certificate and endorsement is being revised to indicate that the six month reporting period is only necessary when the policy is canceled or not renewed.

Appendix C. Mapping and Digital Data Standards

A new appendix is being proposed. Appendix C consists of the Department's "Mapping and Digital Data Standards." This document establishes digital maps as the standard for submission, and delineates the technical standards for digital map development. The standards are applicable to all geographical information submitted to the Department. This appendix is incorporated into the rules by reference where applicable.

Social Impact

The social impact of these proposed rule amendments will be positive since they are intended to make the rules more understandable and less of a burden on the regulated community and the Department, and to further coordination between programs within the Department. While the proposed amendments will require some minor additional items to be submitted as part of the DPCC plan, such as a description of marking in-facility piping and of booming operations, these are simply descriptions of conditions that already should exist at the facility and the negligible burden imposed by these additions to the DPCC and DCR plans is offset by the proposed provision that allows the resulting changes to be incorporated into the DPCC and DCR plans at the time of plan renewal rather than immediately.

Overall, these proposed amendments will reduce the burden on the regulated community by eliminating areas of confusion, allowing only one copy of the DPCC and DCR plans and accompanying maps to be submitted initially with the additional copy only being submitted upon plan approval, reducing the number of facilities required to submit plans, allowing records of discharges from non-major facilities and from non-regulated portions of major facilities to be kept on site rather than being submitted to the Department, and making the determination of penalties and the settlement of penalties for certain offenses more flexible.

Economic Impact

The proposed amendments to the rules are expected to reduce some of the costs of doing business for both major and non-major facilities. The decreased costs will result primarily from not having to submit discharge confirmation reports for many instances of discharges and from not having to submit a second copy of the DPCC and DCR plans until the plans are approved, thereby reducing the number of intermediate copies of paperwork and maps that are generated. Also, the majority of penalties contained in N.J.A.C. 7:1E-6.8(c) will be reduced. Overall cost reductions will be facility-specific, depending on the number of discharges which a facility experiences and the quality and completeness of the DPCC and DCR plans each submits to the Department. The impact of individual penalty assessments will be reduced on average by 50 percent, but the total impact is dependent on the compliance rate of the regulated community.

The other area of reduced costs will be in the area of financial responsibility. The changes to the insurance documents in Appendix B should make such coverage more readily available, which should encourage competition and lower rates. The changes should also make coverage less expensive because certain risks to the insurance industry have been reduced.

There will be an increased cost to the regulated community imposed by the need to prepare general site plans, DLU and ESA maps, and other geographic information, to meet the standards in Appendix C. These costs will be specific to the facility and will depend on the degree of digital map information already developed. The Department's database on major facilities that have submitted geographical information indicates that only one facility has submitted digital information and less than 20 percent have maps that can be readily translated to a GIS format. It is estimated that the cost of submitting digital DLU and ESA maps in a format consistent with the standards in proposed Appendix C will be between $5,000 and $100,000, depending upon the extent of the area to be mapped, cooperation among facilities in the same geographical area, and the quantity of information already available digitally.

The cost of these maps will be offset in part by the increase utility of this geographic information to both the facility and the Department. It may be more cost effective for facilities, in the long term, to submit their geographically based data in digital form rather than in hardcopy form. The facility will be able to quickly make revisions to the maps when necessary. The Department will be able to use the information as part of its GIS.

Environmental Impact

There will be a positive environmental impact from these proposed rule amendments. Although fewer owners or operators of facilities will be submitting discharge confirmation reports to the Department, all persons will still be required to clean up all discharges and to keep the pertinent records on site. Additionally, those major facilities which are being exempted from submitting DPCC and DCR plans under N.J.A.C. 7:1E-4.6(c) either were not

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originally intended to be covered by these rules or have greatly reduced levels of risk to the environment. By requiring a few additional items to be included in the DPCC plan, the Department will be better able to evaluate an owner or operator's discharge prevention capabilities and point out any needed improvements. Also the clarification of portions of the rules will make it easier for facilities to understand the requirements and, thereby, reduce the risk of discharges occurring.

Executive Order No. 27 Statement

Executive Order No. 27(1994) requires State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include a comparison with Federal law. N.J.A.C. 7:1E is not promulgated under the authority of or in order to implement, comply with or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. However, the Department has performed a comparison of those parts of N.J.A.C. 7:1E that are proposed for amendment with analogous Federal regulations. The majority of these Federal regulations, including the Oil Pollution Prevention rules (40 CFR 112) and various U.S. Coast Guard rules (33 CFR 126, 150 through 156), have been promulgated pursuant to the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990. Their purpose is to prevent pollution of surface waters by petroleum and petroleum products. Rules concerning the reporting of discharges of hazardous substances other than petroleum and petroleum products to the environment (40 CFR 304) have been promulgated under the Comprehensive Environmental Response, Compensation and Liability Act. This analysis has shown that the rule amendments exceed standards established by the Federal regulations in two areas. These areas are mapping of environmentally sensitive areas (ESA) and discharge notification and follow-up.

The proposed changes to the information that must be mapped will make the rules consistent with the current practice of the discharge prevention program with respect to mapping. In light of the fact that the Spill Act specifically requires mapping as a component of DPCC plans (see N.J.S.A. 58:10-23.11d2), the Legislature has determined that the costs for such mapping are reasonably incurred as part of the planning process that a facility must undertake to prevent and mitigate discharges. Neither 40 CFR 112, which applies to land-based facilities, nor 33 CFR 150 through 155, which apply to vessels and marine facilities, require mapping. They do require an analysis of ESA in the path of a possible discharge.

In establishing digital GIS format mapping as the standard to be used by facilities preparing DPCC plans, the Department has determined that the increased cost for mapping will be offset by the increased utility of the maps (see Economic Impact statement). The ESA maps will be more portable and accessible to more people in a GIS format. Future changes to the maps will be easier, thus reducing the long range compliance costs.

The reporting requirements in N.J.A.C. 7:1E-5 exceed comparable Federal regulations in two respects. N.J.A.C. 7:1E-5.3(b) defines immediately as 15 minutes or less from the time the person responsible knew or should have known of the discharge. While 40 CFR 304 also requires immediate notification of the National Response Center, there is no equivalent Federal definition of "immediate." Timely reporting enables the Department to quickly assess the situation and determine if any action is required by the Department. However, in establishing 15 minutes as "immediate," the Department realized that there would be incident-specific cases in which 15 minutes would be too short a timeframe and thus included N.J.A.C. 7:1E-5.6, Justification of delay, in the rules, allowing for notification beyond 15 minutes in limited circumstances. There is a negligible increase in cost to the reporting party in requiring notification to the Department earlier than may be required under the Federal regulations. This cost may be offset by reduced cleanup costs associated with a quick response assisted by the Department.

N.J.A.C. 7:1E-5.8 requires the submission of a confirmation report within 30 days of reporting a discharge. There is no follow-up reporting required under similar Federal regulations. This requirement is being revised with this proposal to make it applicable only to persons responsible for discharges at major facilities and transmission pipelines. This makes the rule consistent with the Spill Act, which establishes the requirement for follow-up reporting. Based on the confirmation reports that have been submitted over the past three years, the Department has determined that the costs associated with preparing these reports for persons other than major facilities and transmission pipelines is not justified. Also, recognizing that the overall cost of preparing the confirmation report is high, the information to be included in the report is being greatly reduced so that only the information needed for an analysis of the cause of the discharge and the response to the discharge needs to be included.

Regulatory Flexibility Analysis

These rules and the proposed amendments apply to all facilities which have a total combined storage capacity of hazardous substances at or above the quantities established in N.J.A.C. 7:1E-1.6 and in the definition of "major facility" in the Spill Act. It is estimated that, of the approximately 600 facilities affected by the current rules, 39 percent are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and will thus be affected by the proposed rule amendments. In addition, the discharge notification requirements are applicable to numerous non-major facilities, many of which are small businesses.

The proposed rule amendments will reduce the requirements on many of these small businesses. Non-major facilities will no longer need to submit discharge confirmation reports to the Department, but will rather be required to retain the information on site. In addition, some businesses which store designated types of metals or consumer products will not be required to prepare DPCC and DCR plans. Since a major component of the costs of preparing plans is mapping, the cost to these particular small businesses, which are currently mitigated by a provision for reduction in mapping requirements under N.J.A.C. 7:1E-4.10(e), will be further reduced or eliminated. Also, by making the penalties for failing to perform initial tank integrity tests and for failing to submit DPCC and DCR plans dependent on the number of tanks involved and storage capacity, respectively, small businesses will not be exposed to as large fines as they might have been under the current rules. In addition, the changes to the documents in Appendix B for insurance certificates and endorsements should make it easier and less expensive for small businesses to obtain financial responsibility.

The Department notes, as mentioned above, a small business exemption is included in the rules at N.J.A.C. 7:1E-4.10(e) in regard to mapping. Any facility that qualifies as a small business may request to be exempt from the DLU and ESA mapping requirements. Because the requirement for the submission of digital data in a format consistent with the standards in proposed Appendix C will increase the cost of maps, more small business will qualify for an exemption under this existing provision. Additional relief from the mapping standards for small businesses is not warranted.

In developing these rules and the proposed amendments, the Department has balanced the need to protect the environment against the economic and social impacts and has determined that any further adjustments of the requirements would endanger the environment, public health, and public safety, and therefore, no additional exemption from coverage is provided.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus], except in Appendix B, in which deletions indicated in cursive brackets {thus}):

SUBCHAPTER 1. GENERAL PROVISIONS

7:1E-1.1 Scope

(a) This chapter covers the discharge of hazardous substances as defined in this chapter[, excepting those pursuant to and in compliance with the conditions of a valid and effective Federal or State permit]. These rules set forth guidelines and procedures to be followed by all persons in the event of a discharge of a hazardous substance. They also set forth certain registration, reporting, design and maintenance requirements for owners and operators of major facilities and transmission pipelines which handle hazardous substances.

(b) (No change.)

7:1E-1.5 State non-liability

(a) (No change.)

(b) In the event of a discharge, [the] **any** person responsible for the discharge shall be held liable to the extent determined by the Act.

7:1E-1.6 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Cleanup and removal activities" means actions to clean up or remove or attempt to clean up or remove a discharge of a hazardous substance or the source thereof, or to chemically neutralize the discharge, or **physical** measures to prevent or mitigate any damages to the public health, safety or welfare, including, but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom

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sediments, soils and other affected property, including wildlife and other natural resources.

. . .

"Contractor" means a person, other than an employee of **the owner or operator or** the Department, who has entered into an agreement with **the owner or operator or** the Department to perform services or to provide goods [for the Department].

. . .

"Discharge" means any intentional or unintentional action or omission, unless pursuant to and in compliance with **the conditions of** a valid and effective Federal or State permit, resulting in the releasing, spilling, pumping, pouring, emitting, emptying or dumping of a hazardous substance into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State. This term does not include "leak."

. . .

"Major facility" means all facilities, located on one or more ccontinuous or adjacent properties owned **and**/or operated by the same person, having total **aggregate,** combined storage capacity of:

1.-4. (No change.)

. . .

["Quality assurance" or "QA" means a system for integrating the quality of planning, quality assessment, and quality improvement efforts of various groups in an organization. In pollution measurement, quality assurance is concerned with all activities affecting the quality of the measurements, as well as the establishment of methods and techniques to assure the quality of the measurements.

"Quality control" or "QC" means the application of standard operating procedures for obtaining prescribed standards of performance in a monitoring and measurement process.]

. . .

"Regulated portion" means the area, portion, or equipment in a major facility in which hazardous substances are routinely refined, produced, stored, held, handled, used, processed, or transferred.

. . .

"Storage capacity" means that capacity which is dedicated to, used for, or intended to be used for storage of hazardous substances of all kinds. This term shall include, but not be limited to, above and underground storage tanks, drums, reservoirs, containers, bins, and the intended or actual use of open land or unenclosed space. For a storage tank, the total volumetric design capacity of the tank shall be the storage capacity. This term shall not include the capacity of:

1. [a] **A** heating oil tank servicing only the individual private residence at which it is located; **or**

2. Any underground storage tank at the facility used solely to store heating oil for on-site consumption.

. . .

"Substantial modification" means any change in facility design, construction, operation or maintenance that will materially affect the facility's potential for discharges of hazardous substances. This term may include, but is not limited to, change in service of a storage tank, discontinuation of or start-up of a production facility, change in use of transfer areas or substances transferred, and change in hours of operation.

["Tertiary watershed" means drainage basins which are emptied via third-order channels, as delineated by the United States Geological Survey. A small percentage of land drains directly into higher-order streams without passing through a third-order channel. This occurs predominantly at the edge of large bays and the ocean.]

"Transfer" means onloading or offloading between major facilities and vessels, or **between** vessels [and major facilities, and from vessel to vessel] or **to or from a** major facility [to major facility] except for fueling or refueling operations[, and except that with regard to the movement of hazardous substances other than petroleum, it shall also include any onloading of or offloading from a major facility].

. . .

7:1E-1.7 Hazardous substances

(a) [All] **Petroleum and petroleum products and all** substances listed in Appendix A to this chapter, incorporated herein by reference, [and in any of the following,] shall be considered hazardous substances for the purposes of this chapter. **Appendix A includes:**

[1. Petroleum and petroleum products;]

Recodify existing 2.-8. as **1.-7.** (No change in text.)

(b)-(c) (No change.)

7:1E-1.8 Environmentally sensitive areas

(a) For the purposes of designing and implementing a DPCC and a DCR plan, pursuant to N.J.A.C. 7:1E-4, the following shall be considered environmentally sensitive areas:

1. Surface waters, including, without limitation the following: large rivers, [as defined in N.J.A.C. 7:7E-4.7;] medium rivers, streams, [and] creeks, [as defined in N.J.A.C. 7:7E-4.8;] ponds, [and] lakes, **and reservoirs** as defined in N.J.A.C. 7:7E-[4.9]**4.1**; canals as defined in N.J.A.C. 7:7E-3.8; [trout maintenance waters, trout production waters, FW1 and category one waters as defined at N.J.A.C. 7:9-4.4;] estuaries, as defined in 33 U.S.C. §1330(k); and bays, including without limitation open bays, semi-enclosed bays and back bays, as defined in N.J.A.C. 7:7E-[4.4 and 4.5]**4.1**;

2. Sources of water supply, including [without limitation the following: water supply systems, as defined at N.J.A.C. 7:19-6.2;] **surface water intakes, and wells drawing from aquifers and confined aquifers as defined at N.J.A.C. 7:19-6.2, which are utilized by** public community water systems, public noncommunity water systems, public water systems, and water systems, as defined at N.J.A.C. 7:10-1.3; [public water distribution systems, as defined at N.J.A.C. 7:10-13.2; and public water supply systems, as defined at N.J.S.A. 58:11-65];

3.-5. (No change.)

6. Wetlands and wetland transition areas, including without limitation the following: freshwater wetlands and wetland transition areas, as defined at N.J.A.C. 7:7A-1.4; **and** wetlands, as defined in N.J.A.C. 7:7E-3.27[; and cranberry bogs, as defined at N.J.A.C. 7:7E-3.29];

7.-12. (No change.)

13. Shellfish harvesting waters as defined in N.J.A.C. 7:7E-3.2 and [7:9-4.4] **7:9B-1.4**;

14. (No change.)

15. Habitat for Federal and State endangered or threatened plant and animal species identified pursuant to the Federal Endangered Species Act of 1973, P.L. 93-205[;], the New Jersey Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A, and the New Jersey Endangered **Plant** Species List, N.J.A.C. 7:5C-5.1;

16.-17. (No change.)

7:1E-1.11 Applicability

(a) (No change.)

(b) Major facilities, as defined in N.J.A.C. 7:1E-1.6, are required to meet the standards of this chapter. The Department shall grant the owner or operator of a major facility a reasonable period of time, in light of all circumstances including economic feasibility, to upgrade to meet the standards of [these rules] **N.J.A.C. 7:1E-2, excluding the requirements of N.J.A.C. 7:1E-2.2(a)4 and 2.2(a)5,** if the major facility proves to the satisfaction of the Department that such a time period is needed. The rate of such upgrading shall be proposed by the owner or operator as part of the DPCC and DCR plans submitted pursuant to N.J.A.C. 7:1E-4.

(c)-(e) (No change.)

SUBCHAPTER 2. PREVENTION AND CONTROL OF DISCHARGES AT MAJOR FACILITIES

7:1E-2.1 Scope

This subchapter prescribes the rules of the Department applicable to **the owners or operators of** major facilities storing, transferring, processing or using hazardous substances. The following shall govern the standards for equipment and procedures utilized at major facilities.

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7:1E-2.2 Storage

(a) Aboveground storage tanks shall meet the following standards:

1.-4. (No change.)

5. A report on the initial integrity testing or static head product testing required by (a)4 above shall be submitted to the Department within 30 days of the completion of the test. This report shall include identification of the facility and the equipment tested, the age of the equipment, the test method(s) used, date of the test(s), name and affiliation of the person performing the test, the summary test results, any repairs performed or scheduled to be performed after the tests, and the expected service life of the equipment. The report shall be certified pursuant to N.J.A.C. 7:1E-4.11, and shall be sent to:

Bureau of Discharge Prevention
New Jersey Department of Environmental Protection
CN [027] **424**
Trenton, New Jersey 08625-[0027]**0424**

(b)-(c) (No change.)

(d) [Storage tank installations] **Aboveground storage tanks** shall be equipped with devices capable of detecting overfills. Every **aboveground** storage tank, **except as provided in (e) below,** shall have a high liquid level alarm with an audible or visual signal designed to alert plant personnel of overfills, [unless the capacity of the tank is 2,000 gallons or less, in which case the tank shall be attended at all times during the filling procedure,] and one of the following:

1.-3. (No change.)

(e) Owners or operators of aboveground storage tanks of 2,000 gallons or less may meet the requirement of (d) above by having such tanks attended at all times during the filling procedure.

[(e)]**(f)** (No change in text.)

[(f)]**(g)** Mobile or portable storage tanks shall be positioned or located so as to be protected by secondary containment or diversion structures **designed and built** pursuant to N.J.A.C. 7:1E-2.6. Such storage tanks shall not be located in areas subject to periodic flooding or washout, unless adequately protected so as to prevent hazardous substances stored therein from being carried off or discharged at times of flooding or washout.

[(g)]**(h)** Drum **and other** storage areas shall be equipped with adequate secondary containment **designed and built** pursuant to N.J.A.C. 7:1E-2.6.

7:1E-2.4 In-facility pipes for hazardous substances

(a) (No change.)

(b) New buried piping installations shall be double walled, or have adequate secondary containment **designed and built** pursuant to N.J.A.C. 7:1E-2.6 and a product-sensitive leak detection device, where such devices are state-of-the-art technology.

(c)-(g) (No change.)

7:1E-2.5 Process areas at major facilities for hazardous substances

(a) Drainage from production facilities, including buildings, and other process areas shall be [engineered] **designed and built** so as to provide a means of secondary containment or diversion for leaked hazardous substances **pursuant to N.J.A.C. 7:1E-2.6**.

(b) (No change.)

7:1E-2.7 Marine transfer facilities

(a)-(h) (No change.)

(i) Transfer operations shall not commence, or if commenced shall be discontinued[,] **immediately, upon detection of any of the following conditions** [if]:

1. Weather forecasts **any time within 12 hours prior to the scheduled transfer** predict for the vicinity of the facility that winds will reach gale force, or that heavy rain, sleet, snow or other storm conditions will substantially reduce visibility or otherwise increase the risk of discharges, [of if] **prior to the completion of the transfer, or** severe weather conditions occur after transfer operations have been commenced;

2.-8. (No change.)

(j)-(k) (No change.)

7:1E-2.10 Leak detection and monitoring

(a) All equipment and portions of the major facility in service using hazardous substances shall be visually inspected in accordance with standard operating procedures pursuant to N.J.A.C. 7:1E-2.14, in order to detect any leaks or discharges. Visual inspections shall be performed at a minimum according to the following schedule:

1. (No change.)

2. Once daily, [process areas and] all secondary containment systems **and diversion systems** for aboveground storage tanks which are not impermeable **and all process areas**;

3.-5. (No change.)

(b)-(c) (No change.)

SUBCHAPTER 3. TRANSMISSION PIPELINES

7:1E-3.2 Registration of transmission pipelines

(a) By February 1, 1992, **and by each February 1 at five year intervals thereafter,** the owner or operator of a transmission pipeline shall submit the following information to the Department, on forms provided by the Department:

1.-5. (No change.)

6. An accurate map or maps, **meeting the standards in Appendix C, incorporated herein by reference, and submitted in digital and paper copy form,** showing the location of each of the owner or operator's pipeline facilities, storage areas, transfer areas, or other structures in or on which hazardous substances are stored or handled, the geographical features of the surrounding area, and the location at which the pipeline facility enters or leaves the State. Those maps which are currently maintained pursuant to regulations of the U.S. Department of Transportation are sufficiently accurate;

7.-8. (No change.)

(b) (No change.)

(c) The information required by (a) or (b) above shall be sent to:

Bureau of Discharge Prevention
New Jersey Department of Environmental Protection
CN [027] **424**
Trenton, New Jersey 08625-[0027]**0424**
Attention: Pipeline Registration

SUBCHAPTER 4. REGISTRATIONS AND PLANS

7:1E-4.2 Registration of discharge cleanup organizations

(a) (No change.)

(b) [Two copies] **One copy** of the information required by (a) above shall be sent to the Department at:

Bureau of Discharge Prevention
New Jersey Department of Environmental Protection
CN [027] **424**
Trenton, New Jersey 08625-[0027]**0424**
Attention: Discharge Cleanup Organization Submission

7:1E-4.3 Discharge prevention, containment and countermeasure plans

(a) (No change.)

(b) The DPCC plan shall contain the following general information:

1.-3. (No change.)

4. A general site plan, which accurately reflects the current facility, showing the location of storage tanks, drum storage areas, process buildings, transfer areas, and any other structures in or on which hazardous substances are stored or handled or which are used for the prevention of discharges, and all facility fencing and gates. It shall be drawn to a scale in the range of one inch equals 30 feet to one inch equals 200 feet, such that it is sufficient to delineate all items to be mapped **and is appropriate to the size of the facility, shall meet the standards contained in Appendix C**, and shall be certified by a licensed land surveyor;

5. A drainage and land use map, in the format prescribed in N.J.A.C. 7:1E-4.10, which accurately reflects the current facility and the surrounding area, including **the direction of surface water runoff from the site,** location of all major sewers, storm sewers and all watercourses into which the surface water runoff from the facility drains and the location of [all] supply or monitoring wells;

6.-7. (No change.)

(c) (No change.)

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(d) The DPCC plan shall include, at a minimum, the following technical information:

1. A description of all storage areas, **addressing all standards under N.J.A.C. 7:1E-2.2, including, but not limited to, overfill protection measures and** the schedule or criteria for scheduling integrity testing and maintenance or reconstruction[, pursuant to N.J.A.C. 7:1E-2.2]. **This description must also include the size and contents of storage tanks, drum storage areas, and all other storage areas;**

2. (No change.)

3. A description of the marking of in-facility pipes and procedures for minimizing the chance of a vehicular collision with overhead pipes, pursuant to N.J.A.C. 7:1E-2.4;

[3.]**4.** (No change in text.)

[4.]**5.** A description of **marine transfer areas, including materials transferred, booming operations pursuant to N.J.A.C. 7:1E-2.7, and** the fixed and portable lighting in use in marine transfer areas[,] pursuant to N.J.A.C. 7:1E-2.8;

Recodify existing 5.-11. as **6.-12.** (No change in text.)

(e) The DPCC plan shall include a schedule, to be approved by the Department, for upgrading equipment or portions of the facility to meet the requirements of [this chapter] **N.J.A.C. 7:1E-2, excluding N.J.A.C. 7:1E-2.2(a)4 and 2.2(a)5.**

(f) (No change.)

7:1E-4.5 Financial responsibility

(a) The owner or operator of a major facility shall demonstrate financial responsibility for [taking corrective action resulting from the discharge of a hazardous substance] **cleanup and removal activities**, and for the removal of any abandoned structure owned or operated, as the case may be, by the owner or operator.

(b)-(k) (No change.)

(l) To demonstrate financial responsibility through liability insurance:

1.-2. (No change.)

3. Cancellation or any other termination of the liability insurance by the insurer or group, **except for nonpayment of premium or material misrepresentation by the insured,** will be effective only upon written notice and only after the expiration of 60 days after the date on which the insured receives the written notice or 60 days after the date on which the Department receives the written notice, whichever is later. **Cancellation for nonpayment of premium or material misrepresentation by the insured will be effective only upon written notice and only after the expiration of a minimum of 10 days after the date on which the insured receives the written notice or 10 days after the date on which the Department receives the written notice, whichever is later**; and

4. (No change.)

(m)-(p) (No change.)

[(q) Owners or operators of major facilities who are unable to demonstrate evidence of financial responsibility by the date of the submission of a DCR plan may apply to the Department for suspension of enforcement. In order to receive suspension of enforcement, the owner or operator must demonstrate that:

1. Methods of financial responsibility are not practicable to him or her; and

2. A good faith effort has been made to secure financial responsibility in the full aggregate amount.

(r) The Department may establish an alternate minimum amount of financial responsibility in lieu of suspending enforcement.]

7:1E-4.6 Preparation and submission of plans

(a)-(b) (No change.)

(c) Where a major facility's storage capacity would not exceed the minimum quantity under the N.J.A.C. 7:1E-1.7 definition of "major facility" without including the items specified at (c)1 or 2 below, the owner or operator shall not be required to prepare or submit a DPCC or DCR plan pursuant to this section:

1. Metals, in either their pure elemental form or alloyed, in solid pieces with at least one dimensional measurement equal to or exceeding 100 micrometers (0.004 inches); or

2. Consumer products, packaged in final form, intended to be used on or ingested into the human body in concentrations which are recognized as safe and effective or generally recognized as safe for such use by United States Food and Drug Administration regulation, approval, or adjudication.

(d) Any change in an approved DPCC plan or DCR plan necessitated by amendments to this chapter shall be incorporated into the plan when the plan is renewed pursuant to N.J.A.C. 7:1E-4.9(e).

Recodify existing (c)-(f) as **(e)-(h)** (No change in text.)

[(g)]**(i)** [Two copies] **One copy** of a DPCC or DCR plan, **which must include an original certification pursuant to N.J.A.C. 7:1E-4.11,** shall be submitted to the Department for approval. **Within 30 days of receipt of approval pursuant to N.J.A.C. 7:1E-4.7, a second copy of the approved DPCC or DCR plan shall be submitted to the Department.** Copies shall be sent to:

Bureau of Discharge Prevention
New Jersey Department of Environmental Protection
CN [027] **424**
Trenton, New Jersey 08625-[0027] **0424**
Attention: Plan Submittal

7:1E-4.7 Approval and conditional approval of plans

(a) The Department shall act to approve or deny approval of a complete submission of a DPCC or DCR plan, pursuant to N.J.A.C. 7:1E-4.6, within 180 days of receipt, or no later than the date on which the new major facility is issued treatment works approvals pursuant to N.J.A.C. 7:14A-[12]**22** which are required as conditions precedent to lawful operation of the facility, whichever is longer.

(b)-(d) (No change.)

(e) The owner or operator shall demonstrate financial responsibility pursuant to N.J.A.C. 7:1E-4.5 by the time the Department acts to deny or approve a DPCC or DCR plan pursuant to (a) above. If the owner or operator demonstrates to the satisfaction of the Department that none of the methods of financial responsibility set forth in N.J.A.C. 7:1E-4.5 is practicable to him or her, and that a good faith effort has been made to secure financial responsibility in the full aggregate amount, the Department shall:

1. Conditionally approve the plan; or

2. Establish an alternate minimum amount of financial responsibility pursuant to N.J.A.C. 7:1E-4.5(b).

(f) A conditional approval under (e) above shall set forth a date on which the conditional approval shall expire unless the owner or operator has demonstrated financial responsibility in compliance with the requirements of N.J.A.C. 7:1E-4.5.

Recodify existing (e)-(g) as **(g)-(i)** (No change in text.)

7:1E-4.10 Mapping criteria

(a) Drainage and land use, and topographical maps delineating environmentally sensitive areas, required pursuant to N.J.A.C. 7:1E-4.3(b)5 and 6, shall meet the following standards:

1. (No change.)

[2. If required for clarity, all delineations shall be made on stable base mylar overlays registered to the basemaps.

3. Mapped information shall not be so crowded as to obscure the clarity of data of any features.

4. All maps shall have a minimum of four reference points (tics) widely spaced across the map for which the geographic coordinates are known. The coordinates for each tic shall be listed by the appropriate ticmark and shall be in New Jersey State Plane Feet.

5. Delineations shall be made with a standard drafting/technical pen producing a line width of 0.01 inches, provided however, that a greater line width of up to 0.05 inches may be used when necessary for emphasis. In all cases, the drafted lines and points shall bisect the feature as seen on the basemap and shall be within +/–50 feet of its location on the ground.

6. Mapped data from other sources must be accurately transferred to the basemaps.

7. The name and the affiliation of the preparer of the map, the date of preparation, the scale or scales employed, and the sources of data used shall be stated in a legend block on each map.]

2. Mapped information shall meet the standards contained in Appendix C.

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(b) Drainage and land use maps, required pursuant to N.J.A.C. 7:1E-4.3(b)5, shall:

1. Include maps for the land area within 1,000 feet from the major facility's boundary. This boundary includes all lands owned or used by the owner or operator at a given location. The following categories of land use shall be included:

[i. Urban land:]

Recodify existing (1)-(3) as **i.-iii.** (No change in text.)

iv. Industrial;

[(4)]**v.** Recreational land and parks;

[(5)]**vi.** Schools; [and]

[(6)]**vii.** Hospitals and nursing care facilities;

vii. Other urban lands not specified in (b)1i through vii above;

[ii. Water:]

Recodify existing (1)-(3) as **ix.-xi.** (No change in text.)

[(4)]**xii.** Bays and estuaries; [and]

[(5)]**xiii.** Cranberry bogs;

[iii. Wetlands:]

[(1)]**xiv.** Coastal wetlands; [and]

[(2)]**xv.** Interior wetlands;

[iv.]**xvi.** Agricultural land;

[v. Barren lands:]

[(1)]**xvii.** Beaches;

[(2)]**xviii.** Extractive mining;

[(3)]**xix.** Other barren or altered lands; [and]

[iv. Forest:]

[(1)]**xx.** Deciduous **forest**;

[(2)]**xxi.** Coniferous **forest**;

[(3)]**xxii.** Mixed **forest**; and

[(4)]**xxiii.** Brushland and shrubland;

2. (No change.)

3. Locate and label [all] water supply wells and wellhead protection areas which have been delineated by the Department within 1,000 feet from the major facility's boundary, **and monitoring wells owned or operated by the owner or operator at the facility**.

(c) Topographical maps showing environmentally sensitive areas, required pursuant to N.J.A.C. 7:1E-4.3(b)6, shall:

1. Cover that area [of the tertiary watershed] in which the major facility is located which is downgradient or topographically lower than the highest land point within the major facility and which could be affected by a discharge as delineated in (c)2 below[. At a minimum, this shall include the 100 year floodplain];

2. Extend to the maximum area of potential impact, [if that area is greater than the tertiary watershed,] **taking into account the sizes of the tanks, containers, or vessel compartments utilized by the facility, the loss of secondary containment, consideration of containment measures in addition to secondary containment, the dispersiveness of the hazardous substance, temperature extremes, average rainfall and stream flows, tidal cycles, prevailing winds, and potential threat to the environment**. This area shall be the lesser of the following:

i. The distance and path an uncontrolled discharge would travel in 48 hours, [taking into account the largest tank, container, or vessel compartment utilized by the facility, the loss of secondary containment, consideration of containment measures in addition to secondary containment, the dispersiveness of the hazardous substance, temperature extremes, average rainfall and stream flows, tidal cycles, prevailing winds, and potential threat to the environment. All] **including all** floodprone areas [and] **around any surface** water or wetlands features [within the maximum area shall be included, at a minimum];

ii.-iii. (No change.)

3. (No change.)

(d) All maps required by N.J.A.C. 7:1E-4.3(b)4, 5 and 6 shall be submitted in [hard] **digital and paper** copy form[, including two paper copies and, if mylar basemaps are used, two mylar copies]. **One paper copy shall accompany the initial plan submission for approval. Within 30 days of receipt of approval pursuant to N.J.A.C. 7:1E-4.7, a second paper copy and the digital copy of the approved maps shall be submitted to the Department.** [Such hard copies may be accompanied by a submission of the mapped information in digital form, at the option of the person required to submit the map.]

(e) (No change.)

7:1E-4.11 Certifications

(a) Any person who submits a discharge cleanup organization registration, summary test results, plan, plan amendment or plan renewal, or confirmation report to the Department shall include, as an integral part of the discharge cleanup organization registration, summary test results, plan, plan amendment or plan renewal, or confirmation report, the following certification, signed by the highest ranking individual with [direct knowledge and] overall responsibility for the information contained in the certified documents:

"I certify under penalty of law that the information provided in this document is, **to the best of my knowledge,** true, accurate and complete. I am aware that there are significant civil and criminal penalties, including **the possibility of** fines or imprisonment or both, for submitting false, inaccurate or incomplete information."

(b) (No change.)

(c) The additional certification in (b) above shall be signed by the ranking official, as follows:

1.-2. (No change.);

3. For a municipality, the mayor or [equivalent] **other** official **authorized by the local governing body to bind the municipality**;

4. For a county, the county executive or [equivalent] **other** official **authorized by the board of chosen freeholders to bind the county**;

5. For the State, [an official of at least the rank of agency director] **the agency head or person designated by the agency head**; or

6. For any other public agency, a principal executive officer or [ranking elected] **other** official **authorized by the public agency's governing body to bind the public agency**.

(d)-(e) (No change.)

SUBCHAPTER 5. DISCHARGE NOTIFICATION, RESPONSE AND REPORTING

7:1E-5.2 Notification of **historical** discharges [which occurred before the January 23, 1980, amendments to the Act]

(a) All persons responsible for a discharge who know or suspect that a discharge has occurred prior to January 23, 1980, **or who know or suspect that a discharge has occurred between January 23, 1980 and September 12, 1991, that was not required to be reported at that time,** and who have not previously reported that discharge shall conduct a diligent inquiry and shall promptly upon completion of the diligent inquiry and discovery of a discharge notify the Department in writing of such discharge at the address given at N.J.A.C. 7:1E-5.8(e).

(b) All persons responsible for a discharge pursuant to (a) above who previously reported a discharge which occurred prior to January 23, 1980, **or who know or suspect that a discharge has occurred between January 23, 1980 and September 12, 1991, that was not required to be reported at that time,** shall promptly correct or supplement the prior notice to the Department if any of the information in the prior notice is determined to be false, misleading or inaccurate, or if additional relevant information is discovered which has not been previously reported to the Department.

(c) All persons responsible for a discharge who are required to make a notification pursuant to (a) or (b) above and who are subject to an investigation or cleanup action under any State or Federal law, may notify the Department of the discovery of a historical discharge as part of the periodic progress reports required during the investigation or cleanup if the discovery of the historical discharge is coincident with such investigation or cleanup.

7:1E-5.8 Confirmation report **and recordkeeping**

(a) Any [person responsible for a discharge reporting a discharge or leak detection system malfunction] **owner or operator of a transmission pipeline or of a major facility** who has notified, **or should have notified,** the Department **of a discharge from the transmission pipeline or from a regulated portion of the major facility** pursuant to N.J.A.C. 7:1E-5.3 [or 5.5] shall send to the Department a written confirmation report within 30 days of said notification **or within 30 days of when the discharge occurred, whichever time period is less.**

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(b) Any person responsible for a discharge who is not the owner or operator of a major facility or transmission pipeline, or who has experienced a discharge from a non-regulated portion of a major facility, and who has notified the Department pursuant to N.J.A.C. 7:1E-5.3, shall keep records of the cleanup and removal actions taken in accordance with the requirements of N.J.A.C. 7:26E, Technical Requirements for Site Remediation.

[(b)]**(c)** Any person required to submit a confirmation report pursuant to (a) above shall include the following in the confirmation report:

1. The name, address and telephone number of the individual that reported the discharge [or discharge detection malfunction] pursuant to N.J.A.C. 7:1E-5.3 [or 5.5 above];

2. The name, address and telephone number of the individual submitting the confirmation report if different from the individual identified in [(b)1] **(c)1** above**, and the relationship between said persons, such as employer-employee, or contractor-client**;

[3. If the person identified in (b)2 above is either not subject to the provisions of this subchapter, or is submitting the confirmation report on behalf of another person, the name, address, and telephone number of the person subject to the provisions of this subchapter for whom the confirmation report is being submitted;

4. The name, address and telephone number of each person in any way responsible for the discharge;]

Recodify existing 5.-6. as **3.-4.** (No change in text.)

[7.]**5.** The location of the discharge, as follows:

i. For a discharge from sites located on land, the name of the site, the street address, the tax lot and block, the municipality, the county, any Department or EPA ID numbers of facilities involved, and a [site] **digital** map identifying the area in which the discharge occurred and the surrounding area **and which meets the standards in Appendix C**;

ii. (No change.)

Recodify existing 8.-9. as **6.-7.** (No change in text.)

[10.]**8.** The date and time at which the discharge began, the date and time at which the discharge was discovered, the date and time at which the discharge ended, and the date and time at which the Department was notified pursuant to N.J.A.C. 7:1E-5.3 [or 5.5];

[11.]**9.** A [detailed] description of the measures taken to contain, clean up and remove the discharge, **and a** summary of costs incurred[, and proof of proper disposal of all hazardous substances discharged];

[12. The corrective actions or countermeasures taken, including a description of equipment repairs or replacements;]

[13.]**10.** [Additional] **Corrective or** preventive measures taken or proposed to minimize the possibility of recurrence;

[14.]**11.** (No change in text.)

[15.]**12.** A description of [the type, quantity, location and date of all] samples taken at or around the site of the discharge, whether before, during or after any containment, cleanup or removal. **The samples shall be taken and analyzed in accordance with N.J.A.C. 7:26E-2. Records of the results shall be kept on-site and made available for Department review, at either the facility or the Department's offices at the discretion of the Department**;

[16. The results of all analyses of samples described in (b)15 above; if the data are unavailable within 30 days due to laboratory delay, any person may apply to the Department at the address specified in N.J.A.C. 7:1E-5.8(d) and (e) for an extension of the deadline, not to exceed an additional 90 days; the decision as to whether or not to grant such an extension rests solely with the Department; the results shall include:

i. The name, address and telephone number of any person conducting sample analyses;

ii. Quality assurance/quality control procedures utilized for sample collection and analyses;

iii. Rational for the location, number and frequency of samples collected;

iv. A detailed description of the sample methodology for all samples, as follows:

(1) Types of sample containers and closures, cleaning procedures of sample containers/closures and sampling equipment;

(2) Use of quality assurance samples (for example, blanks and duplicates);

(3) Groundwater monitoring well permit numbers, designs and installation techniques; and

(4) Chain of custody procedures and sample documentation;

v. A description of the analytical methodologies performed by parameter and rationale for selection of monitoring parameters and analytical methodologies; and

vi. A list by parameter of the concentrations of each hazardous substance analyzed for;]

[17.]**13.** [For major facilities, a] **A** certification stating that financial responsibility demonstrated pursuant to N.J.A.C. 7:1E-4.5 and submitted to the Department pursuant to N.J.A.C. 7:1E-4.4(a)9 is in full force and effect;

Recodify existing 18.-20. as **14.-16.** (No change in text.)

[(c)]**(d)** (No change in text.)

[(d)]**(e)** Any person required to submit a confirmation report for a discharge at a major facility or transmission pipeline shall submit the confirmation report to:

Bureau of Discharge Prevention
New Jersey Department of Environmental Protection
401 East State Street
CN [027]**424**
Trenton, New Jersey 08625-[0027]**0424**
Attention: Discharge Confirmation Report

[(e)]**(f)** Any person required to submit a confirmation report other than those referenced in [(d)]**(e)** above shall submit the confirmation report to:

Site Remediation Program
[Hazardous Waste Enforcement] **Discharge Response** Element
New Jersey Department of Environmental Protection
401 East State Street
CN 028
Trenton, New Jersey 08625-0028
Attention: Discharge Confirmation Report

SUBCHAPTER 6. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:1E-6.3 Procedures for issuance of administrative orders and assessment**, settlement** and payment of civil administrative penalties

(a) (No change.)

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case or when a Notice of Civil Administrative Penalty becomes a Final Order, as follows:

1. If no hearing is requested pursuant to the procedures in N.J.A.C. 7:1E-6.4, a Notice of Civil Administrative Penalty Assessment becomes a Final Order on the 21st calendar day following receipt **of the Notice of Civil Administrative Penalty Assessment** by the violator;

2. If the Department denies the hearing request pursuant to N.J.A.C. 7:1E-6.4(a), a Notice of Civil Administrative Penalty becomes a Final Order and is deemed received on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;

[2.]**3.** If the Department denies the hearing request pursuant to [the standards in the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.] **N.J.A.C. 7:1E-6.4(c)**, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of such denial; or

[3.]**4.** If [an adjudicatory hearing is conducted] **the Department grants the hearing request**, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt of a Final Order in a contested case.

(c)-(h) (No change.)

(i) The Department may, in its discretion, settle any Civil Administrative Penalty assessed pursuant to N.J.A.C. 7:1E-6.5, 6.6, 6.7 or 6.8 according to the following factors:

1. Mitigating or extenuating circumstances not previously considered in the Notice of Civil Administrative Penalty Assessment pursuant to N.J.A.C. 7:1E-6.8;

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2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:1E-6.5 or 6.8;

3. The full payment by the violator of a specified part of the Civil Administrative Penalty assessed if made within a time period established by the Department in an administrative order and provided that the violator waives the right to request an adjudicatory hearing on the Civil Administrative Penalty; or

4. Any other terms or conditions acceptable to the Department not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:1E-6.5, 6.6, 6.7 or 6.8.

7:1E-6.8 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a)-(b) (No change.)

(c) The Department shall determine the amount of the civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. The number of **each of** the following paragraphs corresponds to the number of the corresponding subchapter in N.J.A.C. 7:1E.

1. The violations of N.J.A.C. 7:1E-1, General Provisions, and the civil administrative penalties for each violation are as set forth in the following table, unless modified by (d) below. In no case shall the assessed penalty be less than [zero] **five percent of the base penalty** or more than the statutory limit.

Citation

N.J.A.C. 7:1E-1.11(a)

Base Penalty for each Violation

Gallons	Penalty
>0-9	$500
. . .	. . .
5 million or greater	$10,000,000

The base penalty may be reduced or increased by applying the following factors[1]:

Cause of Discharge

Intentional or Gross Negligence	—50% increase from base
[Operational	—No change from base]
Accidental	—50% reduction from base
Homeowner	—75% reduction from base

Initiate Response to Discharge (from the time the discharge was detected or should have been detected):

[Poor—over]**Over** 2 hours	—20% increase from base
[Fair—within]**Within** 2 hours	—No change from base
[Good—within]**Within** 1 hour	—20% reduction from base
[Excellent—within]**Within** 15 minutes	—40% reduction from base

Area of Impact:

[Off the facility and into]**Into** waters of the State	—[20%]**30%** increase from base
Off the facility but not into waters of the State	—[No change from base] **10% increase from base**
Contained on the facility **but not into waters of the State**	—[40%]**30%** reduction from base

Discharge History (Number of discharges not contained on the facility within the previous 12 months):

Five or more discharges	—100% increase from base
1-[5]**4** discharges	—50% increase from base
Zero discharges	—No change from base

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[1]The penalty for each violations is calculated by summing the base penalty and the resultant percentage of the base penalty for each of the [four] **applicable** factors.

2. The violations of N.J.A.C. 7:1E-2, Prevention and Control of Discharges at Major Facilities, and the civil administrative penalty amounts for each violation are as set forth in the following table, unless revised pursuant to (d) below:

Category of Offense[2]	Citation	First Offense	Second Offense	Third or Subsequent Offense
[Inadequate] **No** secondary containment for an above-ground storage tank	2.2(a)1	[$20,000 **$10,000**	$40,000] **$20,000**	$50,000
Failure to surface the base underlying a storage tank with impermeable material	2.2(a)2	[$20,000 **$ 5,000**	$40,000 **$10,000**	$50,000] **$25,000**
Failure to equip a pipe with remotely activated or readily accessible valves	2.2(a)3	[$10,000 **$ 2,000**	$20,000 **$ 4,000**	$50,000] **$10,000**
Failure to perform initial integrity testing or static head product testing	**2.2(a)4**			
Size of Tank (gallons)		**Penalty assessed on a per tank basis**		
2,001-10,000		**$ 250**	**$ 500**	**$ 1,250**
10,001-20,000		**$ 500**	**$ 1,000**	**$ 2,500**
20,001-50,000		**$ 1,250**	**$ 2,500**	**$ 6,250**
50,001-100,000		**$ 2,500**	**$ 5,000**	**$12,500**
100,001-200,000		**$ 5,000**	**$10,000**	**$25,000**
200,001-300,000		**$ 7,500**	**$15,000**	**$37,500**
300,001 and greater		**$10,000**	**$20,000**	**$50,000**
Failure to perform **subsequent** integrity testing	2.2(a)4	[$15,000 **$ 2,000**	$30,000 **$ 4,000**	$50,000] **$10,000**
Penalty assessed on a per tank basis				
Failure to submit summary test results	2.2(a)5	[$ 1,000 **$ 250**	$ 2,000 **$ 500**	$ 5,000] **$ 1,250**
Improper design of heating coil system	2.2(c)	[$10,000 **$ 2,000**	$20,000 **$ 4,000**	$50,000] **$10,000**
Failure to equip storage tanks with devices capable of detecting overfills and initiating shutdown mechanisms	2.2(d)	[$15,000 **$ 5,000**	$30,000 **$10,000**	$50,000] **$25,000**
Failure to direct overfill lines into appropriate holding areas	2.2(e)	[$15,000 **$10,000**	$30,000] **$20,000**	$50,000
Failure to locate mobile or portable storage tanks in areas protected by secondary containment	2.2(f)	[$15,000 **$ 5,000**	$30,000 **$10,000**	$50,000] **$25,000**

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Location of mobile or portable storage tanks in areas subject to flooding or washout	2.2(f)	[$20,000 **$10,000**	$40,000] **$20,000**	$50,000
Failure to equip drum storage areas with [adequate] secondary containment	2.2(g)	[$15,000 **$10,000**	$30,000] **$20,000**	$50,000
Failure to [surface] **equip** a tank car or tank truck loading/unloading area with [impermeable material or to equip area with] secondary containment	2.3(a)	[$20,000 **$10,000**	$40,000] **$20,000**	$50,000
Failure to inspect the lowermost drain and all outlets of a tank car or tank truck prior to filling	2.3(b)	[$ 5,000 **$ 1,000**	$10,000 **$ 2,000**	$25,000] **$ 5,000**
Failure to examine for leakage during filling and secure valves on all manifolds of a tank car or tank truck prior to departure	2.3(c)	[$ 5,000 **$ 1,000**	$10,000 **$ 2,000**	$25,000] **$ 5,000**
Failure to provide a physical barrier, brake interlock or similar system in a transfer area	2.3(d)	[$10,000 **$ 5,000**	$20,000 **$10,000**	$50,000] **$25,000**
Failure to attend a tank car **or tank truck** [at reasonable intervals] during a transfer [and during topping off]	2.3(e)	[$10,000 **$ 5,000**	$20,000 **$10,000**	$50,000] **$25,000**
[Failure to attend a tank truck at all times during a transfer	2.3(e)	$10,000	$20,000	$50,000]
Failure to properly mark in-facility pipes	2.4(a)	$ 5,000	$10,000	$25,000
Failure to double wall or have adequate secondary containment and a leak detention device for new buried in-facility pipes	2.4(b)	[$15,000 **$ 5,000**	$30,000 **$10,000**	$50,000] **$25,000**
Failure to equip existing in-facility buried pipe with leak detection devices	2.4[(b),] (c)	[$15,000 **$ 5,000**	$30,000 **$10,000**	$50,000] **$25,000**
Failure to [examine exposed in-facility buried pipe and] make necessary repairs**, upgrades** or replacements **to exposed in-facility pipe**	2.4(d)	[$15,000 **$10,000**	$30,000] **$20,000**	$50,000
[Failure to upgrade in-facility pipe when required	2.4(d)	$15,000	$30,000	$50,000]
Failure to cap, blank-flange or physically remove in-facility pipe removed from service	2.4(e)	$10,000	$20,000	$50,000
Improper design of pipe supports	**2.4(f)**	**$ 2,000**	**$ 4,000**	**$10,000**
Failure to minimize the chance of vehicular collision with in-facility pipe	2.4(g)	[$ 5,000 **$ 2,000**	$10,000 **$ 4,000**	$50,000] **$10,000**
[Improper design of a drainage system	2.5(a), (b)	$15,000	$30,000	$50,000]
Failure to provide secondary containment for process areas	**2.5(a)**	**$10,000**	**$20,000**	**$50,000**
Failure to provide for a hazardous substance which drained into process wastewater lines	2.5(b)	[$20,000 **$ 2,000**	$40,000 **$ 4,000**	$50,000] **$10,000**
Inadequate or improper secondary containment	2.6(a), [(b),] (c)	[$20,000 **$ 5,000**	$40,000 **$10,000**	$50,000] **$25,000**
Failure to maintain adequate containment devices	2.6(d) 2.7(b), (c)	$10,000	$20,000	$50,000
Failure to deploy or maintain a containment device on standby when required	2.7(d), (e)	[$20,000 **$10,000**	$40,000] **$20,000**	$50,000
Failure to properly deploy a containment device	2.7(f), (g), (h)	[$15,000 **$ 5,000**	$30,000 **$10,000**	$50,000] **$25,000**
Commencement or continuation of transfer operations during unacceptable conditions	2.7(i)	$15,000	$30,000	$50,000
Failure to properly clean up and remove a discharge prior to removing a containment device	2.7(j)	$20,000	$40,000	$50,000
Failure to retrieve a containment device	2.7(k)	$ 5,000	$10,000	$25,000
Improper or inadequate illumination	2.8	[$15,000 **$ 5,000**	$30,000 **$10,000**	$50,000] **$25,000**
Failure to protect a hazardous substance from being carried off or discharged into flood waters	2.9	[$20,000 **$10,000**	$40,000] **$20,000**	$50,000
Failure to conduct visual inspections	2.10(a)	[$10,000 **$ 2,000**	$20,000 **$ 4,000**	$50,000] **$10,000**
Failure to keep documentation of visual inspections	2.10(b)	[$ 1,000 **$ 250**	$ 2,000 **$ 500**	$ 5,000] **$ 1,250**
Failure to implement a groundwater monitoring program	2.10(c)	[$20,000 **$10,000**	$40,000] **$20,000**	$50,000
Failure to keep hazardous substances in suitable containers**, or protect them from the elements and the possibility of leakage**	2.11(a)	$10,000	$20,000	$50,000
[Failure to protect hazardous substances from the elements and the possibility of leakage	2.11(a)	$10,000	$20,000	$50,000]
Failure to repair, replace or take out of service any leaking equipment	2.11(b)	[$10,000 **$ 5,000**	$20,000 **$10,000**	$50,000] **$25,000**
Failure to clean up a leak of a hazardous substance	**2.11(c)**	**$ 5,000**	**$10,000**	**$25,000**
Failure to clean up a [leak or] discharge of a hazardous substance	2.11(c)[, (d)]	[$20,000 **$10,000**	$40,000] **$20,000**	$50,000
Failure to keep adequate quantities of cleanup materials on hand	**2.11(d)**	**$ 2,000**	**$ 4,000**	**$10,000**
Failure to maintain a supply of safety equipment	2.11(e)	[$10,000 **$ 2,000**	$20,000 **$ 4,000**	$50,000] **$10,000**
Failure to maintain secondary containment or diversion systems in good repair	2.11(f)	[$20,000 **$10,000**	$40,000] **$20,000**	$50,000

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Failure to [visually inspect 2.11(g) flexible hoseline prior to each use and replace if necessary] **remove visibly damaged hoseline**	2.11(g)	[$10,000 **$ 5,000**	$20,000 **$10,000**	$50,000] **$25,000**
Failure to implement a training program	2.12(a), [(b), (c), (d), (f)]	[$15,000 **$10,000**	$30,000] **$20,000**	$50,000
Inadequate training program	**2.12(b), (c)**	**$ 2,000**	**$ 4,000**	**$10,000**
Failure to specify qualifications of trainers	**2.12(d)**	**$ 1,000**	**$ 2,000**	**$ 5,000**
Failure to keep documentation of all training	2.12(e)	[$ 1,000 **$ 250**	$ 2,000 **$ 500**	$ 5,000] **$ 1,250**
Failure to have procedures to ensure training of employees of outside contractors	**2.12(f)**	**$ 1,000**	**$ 2,000**	**$ 5,000**
Failure to provide adequate security or to follow security procedures	2.13	$ 5,000	$10,000	$25,000
Failure to establish standard operating procedures (SOPs)	2.14(d)	[$10,000 **$ 250**	$20,000 **$ 500**	$50,000] **$ 1,250**
Penalty assessed per SOP				
Failure to make copies of the SOPs or MSDS or fact sheets in all appropriate languages readily available	2.14(a, b, c)	[$ 5,000 **$ 250**	$10,000 **$ 500**	$25,000] **$ 1,250**
Failure to incorporate modifications of procedures into the SOPs prior to implementation	2.14(f)	[$ 5,000 **$ 250**	$10,000 **$ 500**	$25,000] **$ 1,250**
Failure to maintain and make available a current index of SOPs	2.14(g)	[$ 1,000 **$ 250**	$ 2,000 **$ 500**	$ 5,000] **$ 1,000**
Failure to maintain required records	2.15	[$ 1,000 **$ 250**	$ 2,000 **$ 500**	$ 5,000] **$ 1,000**

3. The violations of N.J.A.C. 7:1E-3, Transmission Pipelines, and the civil administrative penalty amounts for each violation, are as set forth in the following table, unless modified pursuant to (d) below:

Category of Offense[2]	Citation	First Offense	Second Offense	Third or Subsequent Offense
Failure to register	3.2(a)	[$ 5,000 **$ 1,000**	$10,000 **$ 2,000**	$25,000] **$ 5,000**
[Failure to complete registration form	3.2(a)	$ 1,000	$ 2,000	$ 5,000]
Failure to report a change in information	3.2(b)	[$ 1,000 **$ 100**	$ 2,000 **$ 200**	$ 5,000] **$ 500**
Failure to conform to 49 CFR 195	3.3	$10,000 **$ 2,000**	$20,000 **$ 4,000**	$50,000 **$10,000**
Failure to submit the required information	3.4	$ 5,000 **$ 1,000**	$10,000 **$ 2,000**	$25,000 **$ 5,000**

4. The violations of N.J.A.C. 7:1E-4, Plans and Registrations, and the civil administrative penalty amounts for each violation, are as set forth in the following table, unless modified pursuant to (d) below:

Category of Offense[2]	Citation	First Offense	Second Offense	Third or Subsequent Offense
Failure to register annually	4.2(a)	[$ 5,000 **$ 1,000**	$10,000 **$ 2,000**	$25,000] **$ 5,000**
[Failure to complete registration form	4.2(a)	$ 1,000	$ 2,000	$ 5,000]
Failure to appoint a response coordinator	4.3(a)	[$ 5,000 **$ 1,000**	$10,000 **$ 2,000**	$25,000] **$ 5,000**
[Failure to submit a DPCC or DCR plan	4.3(a) 4.4(a)	$20,000	$40,000	$50,000]
Failure to maintain on-site and make available any required plans or documentation	4.3(f) 4.7(g)	$ 1,000	$ 2,000	$ 5,000
Failure to have adequate cleanup equipment and personnel available	4.4(b)	[$10,000 **$ 5,000**	$20,000 **$10,000**	$50,000] **$25,000**
Failure to demonstrate financial responsibility	4.5(a), (b)	[$15,000 **$ 5,000**	$30,000 **$10,000**	$50,000] **$25,000**
Failure to notify of bankruptcy commencement	4.5(o)	[$ 1,000 **$ 250**	$ 2,000 **$ 500**	$ 5,000] **$ 1,000**
Failure to submit a DPCC and DCR plan	**4.6(a, b)**			
DPCC/DCR Plan due by:				
August 1, 1994	**4.6(b)6**	**$ 2,000**	**$ 4,000**	**$10,000**
February 1, 1994	**4.6(b)5**	**$ 4,000**	**$ 8,000**	**$20,000**
August 1, 1993	**4.6(b)4**	**$ 6,000**	**$12,000**	**$30,000**
February 1, 1992	**4.6(b)1**	**$ 8,000**	**$16,000**	**$40,000**
August 1, 1992	**4.6(b)2**	**$10,000**	**$20,000**	**$50,000**
February 1, 1993	**4.6(b)3**	**$12,000**	**$24,000**	**$50,000**
Failure to submit a DPCC and DCR plan for a new facility	**4.6(c)**	**$ 6,000**	**$12,000**	**$30,000**
Failure to submit information when requested by the Department	4.6(f)	$ 1,000	$ 2,000	$ 5,000
Failure to submit copy of approved plan	**4.6(i)**	**$ 250**	**$ 500**	**$ 1,250**
Failure to resubmit an acceptable plan	**4.7(b)**	**$ 5,000**	**$10,000**	**$25,000**
[Failure to submit an amendment	4.9(b)	$ 5,000	$10,000	$25,000]

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Failure to provide notice of new construction, installation or modification	4.9(a)	$ 1,000	$ 4,000	$ 5,000
Failure to submit an amendment	**4.9(b)**	**$ 2,000**	**$ 4,000**	**$10,000**
Failure to renew DPCC/DCR plans	4.9(e)	[$ 5,000	$10,000	$25,000]
		$ 2,000	**$ 4,000**	**$10,000**
Failure to submit copy of approved maps	**4.10(d)**	**$ 250**	**$ 500**	**$ 1,250**
Failure to provide any required certification	4.11	$ 5,000	$10,000	$25,000
		$ 2,000	**$ 4,000**	**$10,000**

5. The violations of N.J.A.C. 7:1E-5, Notification, Response and Reporting, and the civil administrative penalty amounts for each violation, are as set forth in the following table, unless modified pursuant to (d) below:

Category of Offense	Citation	First Offense	Second Offense	Third or Subsequent Offense
Failure to promptly notify the Department of a discharge	5.2(a)	[$10,000	$20,000	$50,000]
		$ 5,000	**$10,000**	**$25,000**
Failure to immediately notify the Department of a discharge	5.3(a)	[$10,000	$20,000	$50,000]
		$ 5,000	**$10,000**	**$25,000**
Failure to provide all required information upon notification	5.2(b)	[$ 1,000	$ 2,000	$ 5,000]
	5.3(c)	**$ 250**	**$ 500**	**$ 1,250**
	5.4(b)			
Failure to prominently display notification requirements	5.3(d)	[$ 5,000	$10,000	$25,000]
		$ 500	**$ 1,000**	**$ 2,500**
Failure to notify the Department of a discharge of aircraft fuel	5.4(a)	[$ 5,000	$10,000	$25,000]
		$ 3,000	**$ 6,000**	**$15,000**
Failure to notify **the Department** of a malfunction in a [leak] **discharge** detection system	5.5(a)	$ 5,000	$10,000	$25,000
		$ 2,000	**$ 4,000**	**$10,000**
Failure to notify **the Department** of the status of a malfunctioning discharge detection system	5.5(c)	$ 1,000	$ 2,000	$ 5,000
Failure to attempt to stop and contain a discharge or to follow the DCR action plan	5.7(a)	$20,000	$40,000	$50,000
Failure to submit a confirmation report	5.8(a)	[$ 5,000	$10,000	$25,000]
		$ 2,000	**$ 4,000**	**$10,000**
Failure to include all required information in a confirmation report	5.8[(b)]**(c)**	[$ 1,000	$ 2,000	$ 5,000]
	[(c)]**(d)**	**$ 250**	**$ 500**	**$ 1,250**
Failure to coordinate any remedial action with the Department	5.7(a)	$ 5,000	$10,000	$25,000
Failure to file a requested amendment following a discharge	5.11(a)	[$5,000	$10,000	$25,000]
		$ 2,000	**$ 4,000**	**$10,000**

[2]The column headed "Category of Offense" is descriptive in nature and to be used for easy reference only. The rule language cited in the column headed "Citation" shall determine the specific violation.

(d) (No change.)

APPENDIX B

FINANCIAL FORMS

B.1 Letter from chief financial officer:

To support a financial test of self-insurance or a guarantee, the chief financial officer of the major facility or guarantor shall prepare and sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [name and address of the owner or operator, or guarantor]. This letter is in support of the use ["the financial test of self-insurance" and/or "guarantee"] to demonstrate financial responsibility for {taking corrective action caused by discharges} **cleanup and removal activities arising from operating {name(s) and address(es) of facility(ies)}** in the amount of at least [dollar amount] per occurrence [**"per facility" if multiple facilities are covered by this one document**] and [dollar amount] annual aggregate [**"per facility" if multiple facilities are covered by this one document**].

A ["financial test" and/or "guarantee"] is also used by this ["owner or operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under the following EPA or State rules or regulations (i.e. RCRA, ECRA, UST, etc.):

[applicable rules or regulations and amounts]

This ["owner or operator" or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his or her financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of N.J.A.C. 7:1E-4.5(g)1 based on tangible net worth are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria based on bond rating or **net working capital** of N.J.A.C. 7:1E-4.5(g)2 are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I (No change.)

ALTERNATIVE II (No change.)

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Appendix B of N.J.A.C. 7:1E, as such rules were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

B.2 Guarantee:

The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

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GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the State of {New Jersey} **[name of state]**, herein referred to as guarantor, to the Department and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

(1) (No change.)

(2) This guarantee satisfies the requirements for assuring funding in the amount of [dollar amount] per occurrence and [dollar amount] annual aggregate for {taking corrective action caused by discharges} **cleanup and removal activities** arising from operating the above identified major facility.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or substantial business relationship with owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Department and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a discharge has occurred at a facility covered by this guarantee, the guarantor, upon instructions from the Department, shall fund a standby trust fund in an amount sufficient to cover cleanup and removal costs, but not to exceed the coverage limits specified in N.J.A.C. 7:1E-4.5(b).

In the event that the Department determines that [owner or operator] has failed to perform {corrective action for discharges} **cleanup and removal activities** arising out of the operation of the above-identified facility, the guarantor, upon written instructions from the Department, shall fund a standby trust in an amount sufficient to cover cleanup and removal costs, but not to exceed the coverage limits specified above.

(4)-(9) (No change.)

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix B of N.J.A.C. 7:1E as such rules were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

B.3 Insurance or risk retention group:

Each insurance policy must be amended by an endorsement worded as specified in paragraph (1) or evidenced by a certificate of insurance worded as specified in paragraph (2), except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) ENDORSEMENT

NAME: [name of each covered location]

ADDRESS: [address of each covered location]

_____

_____

POLICY NUMBER: _____

PERIOD OF COVERAGE: [current policy period]

NAME OF [INSURER OR RISK RETENTION GROUP]:

_____

_____

ADDRESS OF [INSURER OR RISK RETENTION GROUP]:

_____

_____

NAME OF INSURED: _____

ADDRESS OF INSURED: _____

_____

_____

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance**, subject to public policy considerations,** covering the following facility: [name and address of the facility] for {taking corrective action caused by discharges} **cleanup and removal activities**.

The limits of liability are [insert the dollar amount of the "per occurrence" and "annual aggregate" limits of the Insurer's or Group's liability], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. (No change.)

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of {corrective action} **cleanup and removal activities**, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms.

c. (No change.)

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"]**, except for nonpayment of premium or material misrepresentation by the insured,** will be effective only upon written notice and only after the expiration of 60 days after the date on which the insured receives the written notice or 60 days after the date on which the Department receives the written notice, whichever is later. **Cancellation for nonpayment of premium or material misrepresentation by the insured will be effective only upon written notice and only after the expiration of a minimum of 10 days after the date on which the insured receives the written notice or 10 days after the date on which the Department receives the written notice, whichever is later.**

[Insert for claims-made policies:

e. {The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or termination of the policy.} **The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or nonrenewal of the policy, except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and that arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date.]**

I hereby certify that the wording of this instrument is identical to the wording in Appendix B of N.J.A.C. 7:1E and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance" or "eligible to provide insurance as an excess or surplus lines insurer in New Jersey".]

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(2) CERTIFICATE OF INSURANCE

NAME: [name of each covered location]

ADDRESS: [address of each covered location]

_____

_____

POLICY NUMBER: _____

ENDORSEMENT (if applicable): _____

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PERIOD OF COVERAGE: [current policy period]

NAME OF [INSURER OR RISK RETENTION GROUP]:

ADDRESS OF [INSURER OR RISK RETENTION GROUP]:

NAME OF INSURED:

ADDRESS OF INSURED:

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance, **subject to public policy considerations,** covering the following facility: [List the name and address of the facility] for {taking corrective action caused by discharges} **cleanup and removal activities** arising from operating the facility identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. (No change.)

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of {corrective action} **cleanup and removal activities**, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms.

c. (No change.)

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], **except for nonpayment of premium or material misrepresentation by the insured,** will be effective only upon written notice and only after the expiration of 60 days after the date on which the insured receives the written notice or 60 days after the date on which the Department receives the written notice, whichever is later. **Cancellation for nonpayment of premium or material misrepresentation by the insured will be effective only upon written notice and only after the expiration of a minimum of 10 days after the date on which the insured receives the written notice or 10 days after the date on which the Department receives the written notice, whichever is later.**

[Insert for claims-made policies:

e. {The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or termination of the policy.} **The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date.**]

I hereby certify that the wording of this instrument is identical to the wording in Appendix B of N.J.A.C. 7:1E and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance" or "eligible to provide insurance as an excess or surplus lines insurer in the State"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Type name]

[Title}, Authorized Representative of {name Insurer or Risk Retention Group]

[Address of Representative]

B.4 Surety Bond:

The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

DATE BOND EXECUTED:

PERIOD OF COVERAGE:

PRINCIPAL: [legal name and business address of owner or operator]

TYPE OF ORGANIZATION: [insert "individual," "joint venture," "partnership," or "corporation"]

STATE OF INCORPORATION (If Applicable):

SURETY(IES): [name(s) and business address(es)]

SCOPE OF COVERAGE: [List the name and address of the facility. List the coverage guaranteed by the bond: {taking corrective action caused by discharges} **cleanup and removal activities.**]

PENAL SUMS OF BOND: Per occurrence $

Annual aggregate $

SURETY'S BOND NUMBER:

Know all Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under N.J.S.A. 58:10-23.11 to provide financial assurance for {taking corrective action caused by discharges} **cleanup and removal activities** arising from operating the facility identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully {take corrective action caused by discharges} **perform cleanup and removal activities** arising from operating the facility identified above, or if the Principal shall provide alternate financial assurance within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a)-(e) (No change.)

Upon notification by the Department that the Principal has failed to {take corrective action} **perform cleanup and removal activities** in accordance with the Department's instructions, as guaranteed by this bond, the Surety(ies) shall either perform {corrective action} **cleanup and removal activities** in accordance with the Department's instructions, or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Department.

Upon notification by the Department that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Department has determined or suspects that a discharge has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Department.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of

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the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal or the date of receipt of the notice of cancellation by the Department, whichever is later, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix B of N.J.A.C. 7:1E as such rules were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

State of Incorporation: _____

Liability limit: $_____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $_____

B.5 Letter of Credit:

The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

[Name and address of the Department]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ____ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars ($ [dollar amount]), available upon presentation of:

(1)-(2) (No change,)

This letter of credit may be drawn on to cover {taking corrective action caused by discharges} **cleanup and removal activities** arising from operating the facility identified below in the amount of [in words] $ [dollar amount] per occurrence and [in words] $ [dollar amount] annual aggregate.

[name and address of facility]

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] and the Department by certified mail that we have decided not to extend this letter of credit beyond the current expiratin date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator] or for 120 days after the date of receipt by the Department, as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Appendix B of N.J.A.C. 7:1E, as such rules were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to ["the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

APPENDIX C

New Jersey Department of Environmental Protection
Mapping the Present to Protect New Jersey's Future

MAPPING
AND DIGITAL DATA STANDARDS

prepared by:

New Jersey Department of Environmental Protection
The Bureau of Geographic and Information Analysis
CN 428
Trenton, NJ 08625

May, 1995

Summary

The New Jersey Department of Environmental Protection (DEP) has developed a Geographic Information System (GIS) for use by the DEP for the storage and analysis of cartographic (mapped) and related environmental scientific and regulatory database information. A GIS is a computer mapping system used in the analysis of geographic data and databases. The DEP requires that mapped information be submitted according to the standards of this document such that the data can be input to the DEP/GIS for review and analysis. This document details three important GIS concepts regarding the creation, capture and delivery of mapped information.

First, all basemaps regardless of scale must meet a definable standard, such as United States National Map Accuracy Standard's (NMAS), referenced in this document, or be of survey quality. This will guarantee true positional accuracy of data layers. The NJDEP has produced a series of photobase maps at quad (1:24000) and quarterquad (1:12000) scales which meet NMAS (See Basemap Availability).

Secondly, geographic data shall be mapped in state plane coordinates (SPC). SPC means a geographic reference system in the horizontal plane describing the position of points or features with respect to other points in New Jersey. The official survey base of the state is known as the New Jersey State Plane Coordinate System whose geodetic positions have been adjusted on the North American Datum of 1983 (NAD83) as per Chapter 218, Laws of New Jersey 1989. Although this official survey base is defined in meters, the NJDEP will accept and prefers state plane coordinators in survey feet.

Thirdly, geographic data must be fully documented (Section 6.0 and 9.0) and delivered to the DEP in digital format, as shown in Table 1 of this document. There are several different formats such as a simple space delimited ASCII file of coordinates, a .DXF file from AutoCad, or an Arc/Info export file, depending on the mapping requirements.

For more information concerning GIS, the user community in New Jersey, data availability, and GPS, the 1995 New Jersey GIS Resource Guide is available from the Bureau of Geographic Information & Analysis (BGIA), CN 428, Trenton, NJ (609) 984-2243 for the cost of reproduction ($20).

Note: Rules, contracts and/or other regulatory documents from the DEP may specify items required such as content, scale, format or media.

MAPPING AND DIGITAL DATA STANDARDS
FOR THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION GEOGRAPHIC INFORMATION SYSTEM

1.0 INTRODUCTION

Geographic Information System (GIS) technology has become a state-of-the-art tool for innovative efforts nationally to protect the natural environment and public health. The New Jersey Department of Environmental Protection (DEP acquired GIS software (ARC/INFO) in 1987 to provide technical and analytical support to the DEP's decision-making process. To adequately protect the environment, the NJDEP must make decisions based on sound, accurate spatial data. This document details the basic standards for creating,

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converting and encoding analog spatial data into a digital form for use on a GIS.

The DEP/GIS is administered by the Bureau of Geographic and Information and Analysis (BGIA). The BGIA is responsible for the day to day operations of the system, training, coordination of data base development, pilot applications, GIS research, and user support. In support of these roles, the BGIA has established a core set of standards for all data development and input for the DEP/GIS. Basic standards will assure consistent data quality and documentation, compatibility between data sets, and facilitate interactive analysis and assure the quality of results derived from the DEP/GIS. For more information concerning GIS, aerial photography, geodetic control, and global positioning (GPS), the 1995 New Jersey GIS Resource Guide, is available from the BGIA, (609) 984-2243.

Geographic data must be delivered to the DEP in digital format, according to Table 1 of this document. This can be as simple as an ASCII file of coordinates, space delimited on 3.5' diskette, to a .DXF file from AutoCad, to an Arc/Info export file, depending on the mapping requirements.

2.0 BASEMAPS

Cartographic (locational) data input into the GIS must be derived from or mapped to georeferenced basemaps that meet or exceed National Map Accuracy Standards (NMAS) or be of survey quality. Recompiling data from sources which are not planimetric to georeferenced basemaps is always required. Basemaps at any scale should always meet NMAS at a minimum (Section 8.0). Data derived from GPS technology must also meet a standard and be documented (Section 7.0).

Over the years the DEP has produced several series of quality basemaps which are GIS compatible. In several cases these maps are synoptic and statewide, such as the photo basemaps associated with the 1991 and 1986 overflights. In other cases the basemaps cover specific areas only, such as the 1977-78 Tidelands photo basemaps which cover coastal tidal New Jersey only. The basemaps described here were produced on stable base mylar, are photo-images, and meet a definable mapping standard. These maps in mylar and paper are acceptable basemaps which should be used whenever possible to generate GIS compatible data and/or to use as a recompilation base. The various Basemap sources are described below.

All the maps described herein with the exception of the 1991/92 products are referenced in NAD27. For this reason, the 1991 Basemap quads (1:24000) and quarterquads (1:12000) series, referenced in NAD83, are highly recommended over all other sources listed for mapping at these scales (See Basemap Availability).

1991 Aerial Photographs and Basemaps

In February and March of 1991 the DEP and the USGS flew a joint high altitude aerial mission over New Jersey producing a set of quarterquad centered color infrared (CIR) photos at 1:40000. These frames are available from the USGS National Earth Science Information Center (703) 648-6045. The frames are available for review at the DEP's Tidelands Element, 9 Ewing Street, Trenton.

The DEP then created a set of hardcopy chronoflex quarterquad (1:12000) and photoquad basemaps (1:24000) (Figure 1) for the public and regulated community to meet the requirements of DEP mandated mapping. This series of maps is referenced in state plane coordinates in NAD83. Mylar copies, the preferred base, are available from the contractor (See Basemap Availability). Paper prints are available from Mapsales. This series of maps represents the best maps available statewide at these two scales for mapping. Soft copy digital images of both quads and quarterquads are also available at both scales (See Basemap Availability).

1986 Freshwater Wetlands Quarterquad Maps (1:12000)

The passage of the Freshwater Wetlands Act of 1987 required the DEP to produce a composite map of the freshwater Wetlands for the state. The Department recommended and subsequently produced a set of 624 chronoflex photo quarterquads for the entire state from the March 1986 overflight. The quarterquads meet NMAS. The maps represent a good source for both photo-interpretation and recompilation at a county, municipal or in many cases, at a site level.

1986 Photoquad Basemaps (1:24000)

The Department sponsored a statewide overflight in March 1986 and produced a complete set of stable base photoquads at 1:24000 (Figure 2). The control for the production of these basemaps was the mylar USGS 7.5-Minute topoquads. The photoquads have been widely used both to create data layers and to recompile other data sources from paper or nonplanimetric sources. Paper prints are available from Mapsales.

1977/78 Tidelands Basemaps (1:2400)

The DEP produced a series of 1:2400 basemaps for the coastal zone including all tidal areas in the state to delineate the State's claim to all tide-flowed lands. The series consists of 1628 photo basemaps. These maps are rectified products which meet NMAS below the ten foot contour. The photo-image is late summer of 1977 and 1978.

USGS 7.5-Minute Series Topoquad Basemaps (1:24000)

The USGS has published an entire series of 172 topographic maps for the state at a scale of 1:24000. The base information ranged from the late 1940's to the 1980's with photo-updates into the 1990's. Because these maps vary in source date, and because the DEP has produced more accurate and current basemaps (1991), the USGS Topoquads series is not recommended as a primary Basemap but may be helpful as a supplemental source of information.

Basemap Availability

Paper prints of 1986 and 1991 photo basemaps may be obtained from NJDEP Mapsales (609) 777-1039, as well as paper prints of most USGS quadrangles. Paper prints from the 1977/78 series are available from the DEP Tidelands Element (609) 292-2573. Other basemaps that meet NMAS may be available from the private sector.

Mylar photo basemaps from 1991, 1986 and 1977/78 and the digital imagery from 1991 may be obtained from the DEP contractor, MARKHURD, Minneapolis, MN (1-800-MAP-HURD).

3.0 MAP COMPILATION

Mapped information comes from a variety of sources which are not always GIS compatible. Consequently, each source must be evaluated to determine whether redrafting is necessary to prepare the data for entry into the GIS. Much of the data required for the GIS can be derived directly from the photo-interpretation of aerial photos to rectified photo basemaps. Data delineated on unrectified sources or sources of unknown quality may be recompiled to rectified photo basemaps. However, some mapped information may be of such poor quality that recompilation is not possible and the data layer must be recreated.

3.1 Photo-interpretation

Today's GIS data development efforts rely, to a large degree on the derivation of themes from the stereoscopic interpretation of aerial photos. The DEP has used this technique in conjunction with various photo basemaps to produce land use/land cover and freshwater wetland coverages, for instance. The DEP maintains an extensive library of current and historical photos in color infrared, color and panchromatic photographs from the 1930's to the present. The bulk of this photography is held by the Tidelands Management Program (TMP). The TMP, offers light tables, photo basemaps and stereoscopes as well as some instruction on set up to assist the public and regulated community.This service is available at a modest fee and is well worth the effort, particularly if the data are to be captured in the GIS.

When creating new data sets or updating existing ones, delineators should be intimately familiar with the classification coding scheme being employed prior to producing data for input into the GIS. Care should be taken in choosing an appropriate standard classification system. If non-standard classification systems are used, the contractor shall fully describe the system.

3.2 Recompilation

Recompilation involves the redrafting of features from one resource to a more accurate, planimetric source based on identifiable features. This method is commonly used to give more accuracy to data which has been delineated on sources of unknown or unspecified quality or paper manuscripts. It is also commonly used to transfer data delineated on unrectified photography to a rectified basemap based on a series of local fits of common photo-identifiable features, such as roads.

To date, this technique has been employed to redraft the U.S.D.A., Natural Resource Conservation Service (NRCS) soils data from the soil survey atlas sheets (mapped to unrectified photos) to georeferenced (rectified) photoquad or quarterquad basemaps. The technique for accomplishing this is detailed in Photobase Map Compilation (USDA, 1984). This manuscript is an excellent technical guide for recompilation.

Other data sources without photo-images may be recompiled to planimetric sources by using other coincident features. For instance, grids on source data may be generated and plotted to planimetric basemaps and used as a guide for the redrafting of information which would otherwise not be usable in a digital form. This method has been used to draft historical purveyor boundaries from old atlas sheets to the photoquads, for instance. Whatever the technique, a data

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dictionary form must be completed for each map layer describing the recompilation techniques employed.

4.0 DATA AUTOMATION

The conversion of analog data to digital data is a critical step in the creation of a digital database in the GIS. Tablet digitizing is the most common method, however, scanning is gaining popularity, particularly when large data development projects are involved. For tablet digitizing manuscript lines should be clear and complete with no gaps or shortfalls. Operators should not interpret and digitize at the same time. The digitizer should concentrate solely on capturing the exact nature of the linework. All maps shall be edge matched prior to digitization to eliminate cartographic errors and reduce digital problems. GPS derived points are captured digitally and do not require automation (Section 7.0).

Heads up digitizing is a new digitizing technique which is useful for capturing data or updates from digital imagery. The BGIA is presently evaluating this technique and will issue related standards in the near future.

Digital accuracy shall be evaluated by proof plotting the digital data to the base at the same scale as the manuscript and overlaying the data to the original map. The linework should be digitized in such a way as to create a digital copy which is within ± one line width. Through this process edites such as omissions and inaccurate representations can be flagged and corrected such that the standard is met.

The coding of features should follow an approved classification system as adopted by state and federal agencies. These codes follow specifications of organizations responsible for deriving and maintaining the data. For example, the DEP uses the Cowardin et al. (1979) system for the Classification of Wetland and Subaqueous Lands in the United States as adopted by the National Wetlands Inventory of the U.S. Fish and Wildlife Service. In addition the Department supports a modified version of Anderson et al. (1976), USGS, for classifying land use/land cover. For prototype classification schemes, clear concise documentation describing the classes is required.

All attribute coding shall be 100% correctly coded. Code sheets shall also be provided, listing the code and full description of each code. All documentation shall be delivered in hard copy and on diskette. Codes shall also be described in the Data Dictionary (Section 9.0).

5.0 DATA TRANSFER

At a minimum, for the delivery of coordinates and simple database, data shall be submitted in an ASCII flat file format on 3.5 diskette. For instance, data from a word processor can be saved to an ASCII text file for delivery.

For GIS binary map files (coverages) the digital format shall be an export format compatible with the DEP/GIS according to Table 1. The NJDEP GIS is ARC/INFO software running on a UNIX based SUN network with a SUN SPARC 1000 server. For submittal to the Department, please use any of formats in Table 1, listed in order of preference (Arc/Info Export, .DXF, flat ASCII). In the future, the Department will support the new federally adopted spatial data transfer standard (SDTS).

Large cartographic digital data sets shall be delivered on 8mm exabyte tape or 150 mb ¼" tapes in UNIX format using tar or cpio (high or low density, please specify). DOS formatted data can be delivered on QIC120 mb tapes. Small data sets may be delivered on 3½" (1.4 mb format) diskette in the format specified (DOS or UNIX). For diskettes with text or files, the data shall be on a DOS formatted disk, in space delimited format file (SDF, no delimiters). Please send all files uncompressed unless decompression software is supplied.

6.0 DOCUMENTATION

Each digital data layer must be fully documented by the producer following the attached data dictionary format (Section 9.0). Additional associated text files which describe details of the coverage are stored as readme files associated with the Dictionary files for each map.

7.0 GLOBAL POSITIONING SYSTEM

The NAVSTAR Global Positioning System (GPS) has become an accepted and widespread technology for capturing mappable features digitally for use in a GIS, particularly for points (wells, outfalls, etc.) and lines (trails, site boundaries, etc.). The system is based on a constellation of orbiting satellites that enable users with GPS receivers to determine 3D positions anywhere on or near the earth's surface. A GPS receiver must be able to "see" 4 or more GPS satellites in order to determine positions.

The range of accuracy afforded by GPS is ±100 meters to sub-centimeter. The accuracy of any coordinates collected with GPS will depend on several factors: receiver type (carrier phase vs. code based), the GPS conditions under which the coordinate data is collected (number of satellites and satellite geometry), whether the quality of the locations are enhanced through differential processing, and the data collection technique (field procedures used) by the GPS receiver operator. GPS accuracies are not expressed in absolute terms. Rather they are expressed as a value such as 5 meters 2dRMS. What this really means is that roughly 95% of the horizontal (x,y) values are within 5 meters of truth.

Receiver Classes and Accuracy Capabilities

The two general classes of GPS receivers provide two very different methods by which GPS signals are processed and therefore accuracy capabilities. Carrier phase receivers use characteristics of the GPS signal (i.e. wavelength) to determine positions, while code based (C/A code) receivers rely on information imbedded in the signal.

Using correct GPS survey techniques and under the right conditions, carrier phase receivers can produce extremely accurate locations (even to a few millimeters 2dRMS). Carrier phase receivers should be used for determining locations that require a high level of accuracy. For a GIS, carrier phase receivers should be used for establishing a very accurate geodetic control network on which very accurate base maps could be generated. GIS feature locations can be determined with carrier phase receivers if the mapping project requires features to be mapped to a very high degree of accuracy (to within 1 meter). Carrier phase GPS operation is more difficult and sometimes impossible in areas that are less GPS friendly. These would include areas with significant obstructions (buildings and tree canopy) that might block or weaken GPS signals.

In most DEP cases, feature mapping for a GIS can be accomplished with data collected with a code based GPS receiver. The DEP recommends that code based GPS receivers for GIS data collection be 6 or more channels (enabling better performance under adverse conditions), and be capable of storing position fix data (allowing post processed differential corrections). All GPS data collected for NJDEP's GIS must be differentially corrected, either in a post process step or in real time. If correct procedures and proper techniques are employed, code based receivers should provide a degree of horizontal accuracy acceptable for most mapping applications (to within 5 meters 2dRMS). Code based receivers cannot be relied upon for accurate elevation data. Elevation values derived by code based GPS receivers may be in error 2 to 4 times the error of the horizontal measurement.

For point features (well locations, sampling stations, pollution sources, etc.) a sample of 200 positions fixes must be collected with PDOP ≤ 6. Linear features (trails, shoreline boundaries, etc.) may also be mapped using GPS by storing position fixes while tracing the feature on foot or in vehicle.

Sources of GPS Base Data

There are several sources of GPS base data in New Jersey. This reference data is necessary for differential GPS. For greater accuracy, users should obtain base data from the source nearest the project area.

The DEP/BGIA operates a Trimble Navigation Pathfinder Community Base Station in Trenton. This station stores GPS base data and makes the files available through an electronic bulletin board system (BBS). The phone number to access the BBS is (609) 633-0511. The logging hours of the receiver are Monday through Friday, 7 am to 7 pm. The BBS is operational seven days a week, 24 hours a day. The base data collected by this station can only be used to differentially correct data from Trimble code based receivers (Pathfinder series). In order for the data to be compatible with other GPS receiver manufacturer's (such as Magellan, or Garmin) file formats, the Trimble file format must be converted to RINEX format. DEP does not provide RINEX base files.

The U.S. Environmental Protection Agency's Region II office located in Edison operates a similar station. The phone number to access the EPA BBS is (908) 321-6663. The logging hours of the station are seven days a week, 7 am to 7 pm. The BBS is operational seven days a week, 24 hours a day.

The National Oceanic and Atmospheric Administration (NOAA) operates a Continuously Operating Reference Station (CORS) at Sandy Hook, as part of a network of stations to support post processing applications. This station provides code range and carrier phase GPS data in the RINEX format. Data can be obtained via the INTERNET (ftp proton.ngs.noaa.gov) and is available for 21 days. This station also broadcasts differential GPS corrections to support real-time positioning and navigation applications. For more information contact the National Geodetic Survey at (301) 731-3208. For more information on GPS refer to the 1995 New Jersey GIS Resource Guide.

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8.0 NATIONAL MAP ACCURACY STANDARDS

United States National Map Accuracy Standards
U.S. Bureau of the Budget, Revised June 17, 1947

With a view to the utmost economy and expedition in producing maps which fulfill not only the broad needs for standard or principal maps, but also the reasonable particular needs of individual agencies, standards of accuracy for published maps are defined as follows:

1. Horizontal accuracy. For maps on publication scales larger than 1:20,000, not more than 10 percent of the points tested shall be in error by more than 1/30 inch, measured on the publication scale; for maps on publication scales of 1:20,000 or smaller, 1/50 inch. These limits of accuracy shall apply in all cases to positions of well-defined points only. Well-defined points are those that are easily visible or recoverable on the ground, such as the following: monuments or markers, such as bench marks, property boundary monuments; intersections of roads, railroads, etc.; corners of large buildings or structures (or center points of small buildings); etc. In general what is well defined will also be determined by what is plottable on the scale of the map within 1/100 inch. Thus while the intersection of two road or property lines meeting at right angles would come within a sensible interpretation, identification of the intersection of such lines meeting at an acute angle would obviously not be practicable within 1/100 inch. Similarly, features not identifiable upon the ground within close limits are not to be considered as test points within the limits quoted, even though their positions may be scaled closely upon the map. In this class would come timber lines, soil boundaries, etc.

2. **Vertical accuracy,** as applied to contour maps on all publication scales, shall be such that not more than 10 percent of the elevations tested shall be in error more than one-half the contour interval. In checking elevations taken from the map, the apparent vertical error may be decreased by assuming a horizontal displacement within the permissible horizontal error for a map of that scale.

3. **The accuracy of any map may be tested** by comparing the positions of points whose locations or elevations are shown upon it with corresponding positions as determined by surveys of a higher accuracy. Tests shall be made by the producing agency, which shall also determine which of its maps are to be tested, and the extent of such testing.

4. **Published maps meeting these accuracy requirements** shall note this fact on their legends, as follows: "This map complies with National Map Accuracy Standards."

5. **Published maps whose errors exceed those aforestated** shall omit from their legends all mention of standard accuracy.

6. **When a published map is a considerable enlargement** of a map drawing (manuscript) or of a published map, that fact shall be stated in the legend. For example, "This map is an enlargement of a 1:20,000-scale map drawing," or "This map is an enlargement of a 1:24,000-scale published map."

7. **To facilitate ready interchange and use of basic information for map construction** among all Federal mapmaking agencies, manuscript maps and published maps, wherever economically feasible and consistent with the uses to which the map is to be put, shall conform to latitude and longitude boundaries, being 15 minutes of latitude and longitude, or 7.5 minutes, or 3¾ minutes in size.

(from Thompson, 1987)

9.0 DATA DICTIONARY

Example:

DATA DICTIONARY

COVERAGE NAME: atlitum

DATA DESCRIPTION: Integrated Terrain Unit for Atlantic county.

KEYWORDS: landuse, soils, Atlantic, geology, floodprone

CONTACTS

AGENCY: BGIA
NAME: Larry Thornton/John Tyrawski
ADDRESS: CN 428
Trenton, NJ 08625
PHONE: 984-2243

MANUSCRIPT MAP INFORMATION

BASEMAP:	Photo-Quad	COORDINATE SYSTEM:	NJ State Plane
MAP DATE:	1986	DATUM:	NAD27
SCALE:	24000	MAP ACCURACY:	NMAS
PROJECTION:	Polyconic	GEOGRAPHIC AREA:	County
MAP MEDIA:	Mylar	FEATURE TYPE:	Poly

MAPPING METHODOLOGY AND MAPPING SOURCES:
Landuse/landcover interpreted from 1986 JSS CIR (1:58000) photos. Geology recompiled from 1906 (1:63360) Atlas Sheets. Soils recompiled from 1978 SCS Soil Survey. Floodprone areas recompiled from paper USGS flood maps (polys closed by Contractor).

MAPPING CRITERIA:
Landuse/landcover mapped using modified Anderson, et al. (1976) classification system. Minimum mapping unit = 2.5 acres. Other sources rescaled to 1:24000 and recompiled to 1986 photoquads based on coincident features.

MAPPING ACCURACY AND DATA LIMITATIONS:
Basemap (photoquad) feature positions are good to about ± 20 feet from locations on manuscript. Freshwater wetlands and geology are general, more detail in FWW and Cogeomap coverages.

MAP AUTOMATION

AUTOMATION DATE: April 1994 COORDINATE SYSTEM: NJ State Plane
DATUM: NAD83

AUTOMATION METHODS: scan
PRODUCTION STAFF: ESRI and AIS, Redlands, CA
AUTOMATION STATUS: complete
DATA AVAILABILITY: QUIC150, Exabyte in Arc/INFO, EXPORT

CARTOGRAPHIC QUALITY:
Data has not been systematically plotted on mylar and checked to basemap. Nodeerrors, labelerrors and slivers resolved. Code validity checked with FREQUENCY.

DISTRIBUTION RESTRICTIONS:
Requires Data Distribution Agreement

MAP AUTOMATION

DATABASE: Info

ITEM NAME	DESCRIPTION
LAND USE	– Landuse/landcover code (four digit).
SOIL-LABEL	– SCS Soil label
PRIM-GEOL	– Primary Geology
SEC-GEOL	– Secondary Geology
SURFICIAL-GEOL	– Surficial Geology
FLOODPRONE	– Floodprone areas
SOIL-INCLUSIONS	– Soil inclusions for polys that had soils polygons of less than 2.5 acres.
SOIL CAPS	– SCS soil labels in capitals for reselects.

LOOKUP AND/OR RELATED DATA FILES:
Lookup tables for landuse/landcover, soils, geology and floodprone areas. Associated readme files (rdm) describe landuse/landcover.

ATTRIBUTE QUALITY:
Frequencies run to check for valid attributes. Field checks were made for all accessible xxx9 polys. Landuse codes containing xxx9 are polygons which require field check.

LOOKUP TABLE DESCRIPTIONS:

ATLBDRK. LUT	Bedrock geology (primary, secondary).
ATLSOILS. LUT	Soils (consult Soil Survey).
ATLFLOOD.LUT	Floodprone areas.
ATLSOILINC.LUT	Soil inclusions.
ATLLU.LUT	Landuse/landcover.
ATLSURF.LUT	Surficial geology.

10.0 REFERENCES

Anderson, J.R., *et al.,* 1979, *A Land Use and Land Cover Classification System for Use with Remote Sensor Data,* U.S. Department of Interior, Geologic Survey Professional Paper 964. 288pp.

Cowardin, L.M., *et al.,* 1976, *Classification of Wetland and Deepwater Habitats of the United States,* U.S. Department of Interior, U.S. Fish and Wildlife Service, FWS/OBS-79/31. 103pp.

Thompson, M.M., *Maps for America,* 1987, 3rd Edition, U.S. Department of the Interior, U.S. Geological Survey, 265pp.

U.S. Department of Agriculture, Soil Conservation Service, 1984, *Photobase Map Compilation, Technical Specifications,* National Instruction No. 170-301. 30pp.

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TABLE 1. NJDEP COMPATIBLE CONFIGURATIONS

PLATFORM	SUN SPARC STATION	PC
OPERATING SYSTEM	UNIX	DOS
FORMAT	ARC/INFO *IMPORT *EXPORT DXF	FLAT ASCII (SDF) ARC/INFO *IMPORT *EXPORT DXF
SOFTWARE	TAR CPIO	VARIOUS
MEDIA	150 MB TAPE 3½" HD 1.44MB CD-ROM EXABYTE (2.3/5GB)	5¼" (1.2MB) 3½" MB 120/250MB QIC120 *COLORADO *MAYNARD

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1991 PHOTOQUAD INDEX

TO 7.5 MINUTE (1:24000) SERIES DEP BASEMAPS

1 Milford PA-NJ
2 Port Jervis Souyh NJ-NYPA
3 Unionville NY-NJ
4 Pine Island NY-NJ
5 Lake Maskenozha PA-NJ
6 Culvers Gap NJ-PA
7 Branchville NJ
8 Hamburg NJ
9 Wawayanda NJ-NY
10 Greenwood Lake NY-NJ
11 Sloatsburg NY-NJ
12 Bushkill PA-NJ
13 Flatbrookville NJ-PA
14 Newton West NJ
15 Newton East NJ
16 Franklin NJ
17 Newfoundland NJ
18 Wanaque NJ
19 Ramsey NJ-NY
20 Park Ridge NJ-NY
21 Nyack NY-NJ
22 Stroudsburg PA-NJ
23 Portland NJ-PA
24 Blairstown NJ
25 Tranquility NJ
26 Stanhope NJ
27 Dover NJ
28 Boonton NJ
29 Pompton Plains NJ
30 Paterson NJ
31 Hackensack NJ
32 Yonkers NJ-NY
33 Bangor PA-NJ
34 Belvidere NJ-PA
35 Washington NJ
36 Hackettstown NJ
37 Chester NJ
38 Mendham NJ
39 Morristown
40 Caldwell NJ
41 Orange, NJ
42 Weehawken NJ-NY
43 Central Park NY-NJ
44 Easton NJ-PA
45 Bloomsbury NJ
46 High Bridge NJ
47 Califon NJ
48 Gladstone NJ
49 Bernardsville NJ
50 Chatham NJ
51 Roselle NJ
52 Elizabeth NJ-NY
53 Jersey City NJ-NY
55 Riegelsville PA-NJ
56 Frenchtown NJ-PA
57 Pittstown NJ
58 Flemington NJ
59 Raritan NJ
60 Bound Brook NJ
61 Plainfield NJ
62 Perth Amboy NJ-NY
63 Arthur Kill NY-NJ
66 Lumberville PA-NJ
67 Stockton NJ-PA
68 Hopewell NJ
69 Rocky Hill NJ
70 Monmouth Junction NJ
71 New Brunswick NJ
72 South Amboy NJ-NY
73 Keyport NJ-NY
74 Sandy Hook NJ-NY
76 Lambertville PA-NJ
77 Pennington NJ-PA
78 Princeton NJ
79 Hightstown NJ
80 Jamesburg NJ
81 Freehold NJ
82 Marlboro NJ
83 Long Beach NJ
86 Trenton West PA-NJ
87 Trenton East NJ-PA
88 Allentown NJ
89 Roosevelt NJ
90 Adelphia NJ
91 Farmingdale NJ
92 Asbury Park NJ
93 Frankford PA-NJ
94 Beverly PA-NJ
95 Bristol PA-NJ
96 Columbus NJ
97 New Egypt NJ
98 Cassville NJ
99 Lakehurst NJ
100 Lakewood NJ
101 Point Pleasant NJ
102 Philadelphia PA-NJ
103 Camden NJ-PA
104 Moorestown NJ
105 Mount Holly NJ
106 Pemberton NJ
107 Browns Mills NJ
108 Whiting NJ
109 Keswick Grove NJ
110 Toms River NJ
111 Seaside Park NJ
112 Marcus Hook PA-NJ-DEL
113 Bridgeport NJ-PA
114 Woodbury
115 Runnemede NJ
116 Clementon NJ
117 Medford Lakes NJ
118 Indian Mills NJ
119 Chatsworth NJ
120 Woodmansie NJ
121 Brookville NJ
122 Forked River NJ
123 Barnegat Light NJ
124 Wilmington South DEL-NJ
125 Penns Grove NJ-DEL
126 Woodstown NJ
127 Pitman West NJ
128 Pitman East NJ
129 Williamstown NJ
130 Hammonton NJ
131 Atsion NJ
132 Jenkins NJ
133 Oswego Lake NJ
134 West Creek NJ
135 Ship Bottom NJ
136 Long Beach NE NJ
137 Delaware City DEL-NJ
138 Salem NJ
139 Alloway NJ
140 Elmer NJ
141 Newfield NJ
142 Buena NJ
143 Newtonville NJ
144 Egg Harbor City NJ
145 Green Brook NJ
146 New Gretna NJ
147 Tuckerton NJ
148 Beach Haven NJ
149 Taylors Bridge DEL-NJ
150 Canton NJ-DEL
151 Shiloh NJ
152 Bridgeton NJ
153 Millville NJ
154 Five Points NJ
155 Dorothy NJ
156 Mays Landing
157 Pleasantville NJ
158 Oceanville NJ
159 Brigantine Inlet NJ
160 Bombay Hook DEL-NJ
161 Ben Davis Point NJ-DEL
162 Cedarville NJ
163 Dividing Creek NJ
164 Port Elizabeth NJ
165 Tuckahoe NJ
166 Marmora NJ
167 Ocean City NJ
168 Atlantic City NJ
169 Fortescue NJ
170 Port Norris NJ
171 Heislerville NJ
172 Woodbine NJ
173 Sea Isle City NJ
174 Rio Grande NJ
175 Stone Harbor NJ
177 Cape May NJ
178 Wildwood NJ
974 Sandy Hook East
983 Long Branch East
992 Asbury Park East
9173 Sea Isle City East

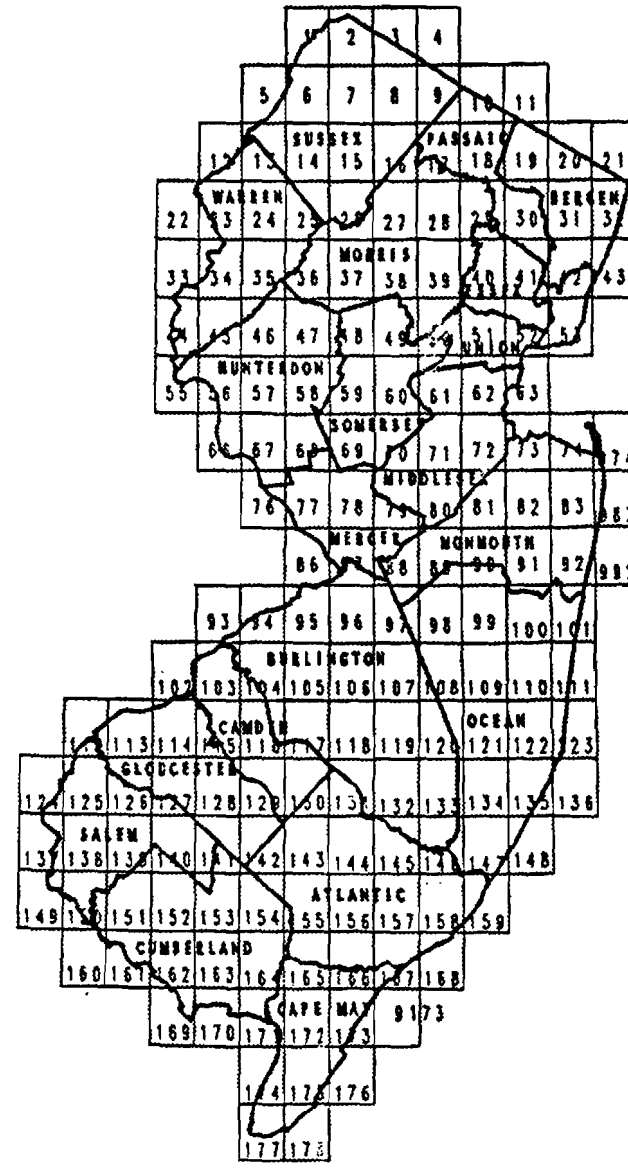

Figure 1

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1986 TOPOQUAD AND PHOTOQUAD INDEX

TO 7.5 MINUTE (1:24000) SERIES USGS & DEP BASEMAPS

1 Milford PA-NJ
2 Port Jervis Souyh NJ-NYPA
3 Unionville NY-NJ
4 Pine Island NY-NJ
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34 Belvidere NJ-PA
35 Washington NJ
36 Hackettstown NJ
37 Chester NJ
38 Mendham NJ
39 Morristown
40 Caldwell NJ
41 Orange, NJ
42 Weehawken NJ-NY
43 Central Park NY-NJ
44 Easton NJ-PA
45 Bloomsbury NJ
46 High Bridge NJ
47 Califon NJ
48 Gladstone NJ
49 Bernardsville NJ
50 Chatham NJ
51 Roselle NJ
52 Elizabeth NJ-NY
53 Jersey City NJ-NY
55 Riegelsville PA-NJ
56 Fre nchtown NJ-PA
57 Pittstown NJ
58 Flemington NJ
59 Raritan NJ
60 Bound Brook NJ
61 Plai nfield NJ
62 Perth Amboy NJ-NY
63 Arthur Kill NY-NJ
66 Lumberville PA-NJ
67 Stockton NJ-PA
68 Hopewell NJ
69 Rocky Hill NJ
70 Monmouth Junction NJ
71 New Brunswick NJ
72 South Amboy NJ-NY
73 Keyport NJ-NY
74 Sandy Hook NJ-NY
76 Lambertville PA-NJ
77 Pennington NJ-PA
78 Princeton NJ
79 Hightstown NJ
80 Jamesburg NJ
81 Freehold NJ
82 Marlboro NJ
83 Long Beach NJ
86 Trenton West PA-NJ
87 Trenton East NJ-PA
88 Allentown NJ
89 Roosevelt NJ
90 Adelphia NJ
91 Farmingdale NJ
92 Asbury Park NJ
93 Frankford PA-NJ
94 Beverly PA-NJ
94 Beverly PA-NJ
94 Beverly PA-NJ
96 Columbus NJ
97 New Egypt NJ
98 Cassville NJ
99 Lakehurst NJ
100 Lakewood NJ
101 Point Pleasant NJ
102 Philadelphia PA-NJ
103 Camden NJ-PA
104 Moorestown NJ
105 Mount Holly NJ
106 Pemberton NJ
107 Browns Mills NJ
108 Whiting NJ
109 Keswick Grove NJ
110 Toms River NJ
111 Seaside Park NJ
112 Marcus Hook PA-NJ-DEL
113 Bridgeport NJ-PA
114 Woodbury
115 Runnemede NJ
116 Clementon NJ
117 Medford Lakes NJ
118 Indian Mills NJ
119 Chatsworth NJ
120 Woodmansie NJ
121 Brookville NJ
122 Forked River NJ
123 Barnegat Light NJ
124 Wilmington South DEL-NJ
125 Penns Grove NJ-DEL
126 Woodstown NJ
127 Pitman West NJ
128 Pitman East NJ
129 Williamstown NJ
130 Hammonton NJ
131 Atsion NJ
132 Jenkins NJ
133 Oswego Lake NJ
134 West Creek NJ
135 Ship Bottom NJ
136 Long Beach NE NJ
137 Delaware City DEL-NJ
138 Salem NJ
139 Alloway NJ
140 Elmer NJ
141 Newfield NJ
142 Buena NJ
143 Newtonville NJ
144 Egg Harbor City NJ
145 Green Brook NJ
146 New Gretna NJ
147 Tuckerton NJ
148 Beach Haven NJ
149 Taylors Bridge DEL-NJ
150 Canton NJ-DEL
151 Shiloh NJ
152 Bridgeton NJ
153 Millville NJ
154 Five Points NJ
155 Dorothy NJ
156 Mays Landing
157 Pleasantville NJ
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159 Brigantine Inlet NJ
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162 Cedarville NJ
163 Dividing Creek NJ
164 Port Elizabeth NJ
165 Tuckahoe NJ
166 Marmora NJ
167 Ocean City NJ
168 Atlantic City NJ
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170 Port Norris NJ
171 Heislerville NJ
172 Woodbine NJ
173 Sea Isle City NJ
174 Rio Grande NJ
175 Stone Harbor NJ
177 Cape May NJ
178 Wildwood NJ

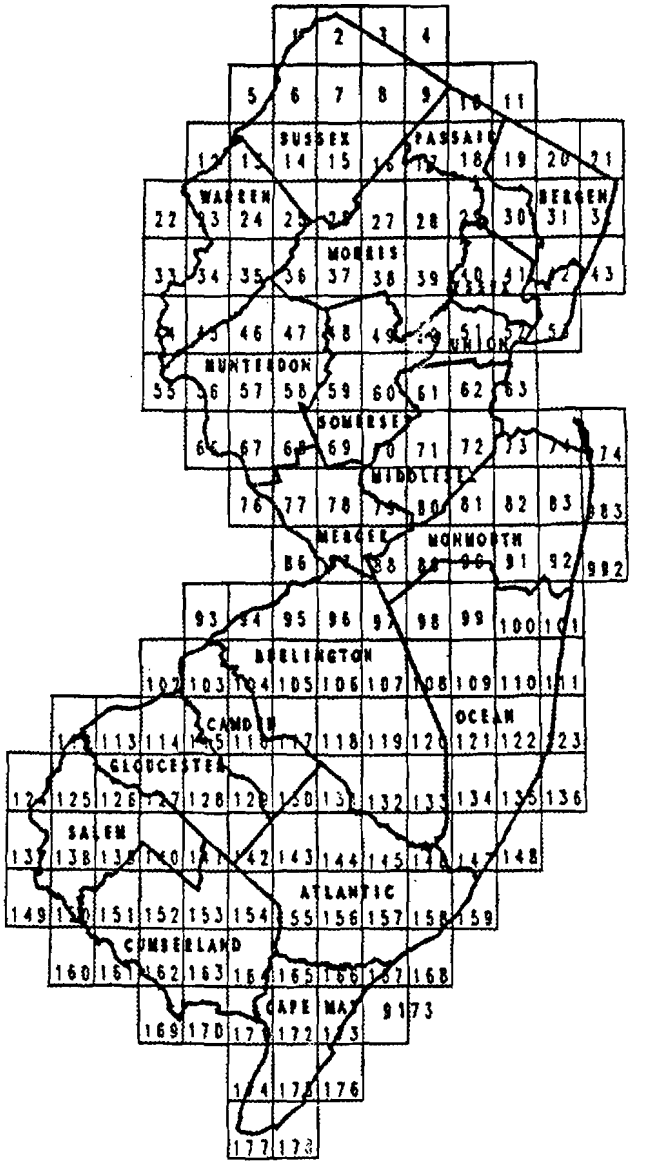

Figure 2

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HEALTH

(a)

PUBLIC HEALTH COUNCIL
DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICES

Licensure of Persons for Public Health Positions
Proposed Readoption with Amendments: N.J.A.C. 8:7

Authorized By: Len Fishman, Commissioner, Department of Health, and Public Health Council, John D. Slade, M.D., Chair.

Authority: N.J.S.A. 26:1A-38 et seq.

Proposal Number: PRN 1995-360.

Submit comments by July 19, 1995 to:
Ronald S. Ulinsky
Program Manager, Public Health Sanitation and Safety Program
New Jersey Department of Health
CN 369
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 8:7 was originally filed and became effective prior to September 1969. Revisions to this chapter were filed and became effective in 1976, 1977, 1978, and 1980. This chapter was adopted as new rules effective September 16, 1985. N.J.A.C. 8:7-2, New Jersey Public Health Licensing and Examination Board, replaced a prior rule and became effective June 6, 1988. On September 14, 1990, N.J.A.C. 8:7 was readopted with amendments.

Pursuant to Executive Order No. 66, N.J.A.C. 8:7, Licensure of Persons for Public Health Positions, expires on September 14, 1995. The Department has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated.

N.J.S.A. 26:1A-38 through 44 establishes the authority for "Examination and Licensing of Health Officers and Inspectors."

A review of the proposal to readopt N.J.A.C. 8:7 with amendments follows:

N.J.A.C. 8:7-1.1 lists those positions which currently require passage of an examination in order for an individual to be issued a license by the New Jersey State Department of Health. The only applicable license categories for the Department to administer at this time are Health Officer and Sanitary Inspector, first grade. All other license categories formerly addressed in these rules are either obsolete (for example, Public Health Laboratory Technician and Sanitary Inspector, second grade) or are currently issued by other State agencies (for example, Plumbing Inspector). This section is being amended to reflect the applicable license categories to be administered by the Department.

N.J.A.C. 8:7-1.2 establishes a Public Health Licensing and Examination Board appointed by the Commissioner of Health, and sets forth its composition and membership tenure. Proposed amendments are being made to make the language of this section consistent with the Department's organizational structure.

N.J.A.C. 8:7-1.3 establishes the requirements for a candidate for licensure to follow when filing an application for a licensing examination. This section is being amended to correct the mailing address of the Department.

N.J.A.C. 8:7-1.4 mandates the Department to collect a statutorily established fee from each qualified candidate for application and licensure examination. No substantive changes are being proposed.

N.J.A.C. 8:7-1.5 establishes the process for reviewing applications received from candidates for licensure as Health Officer and Sanitary Inspector, first grade. No changes are proposed.

N.J.A.C. 8:7-1.6 establishes the procedure for a licensure candidate to appeal the decision of the Public Health Licensing and Examination Board. No changes are proposed.

N.J.A.C. 8:7-1.7 establishes the procedure for suspension or revocation of a license. No changes are proposed.

N.J.A.C. 8:7-1.8 establishes the scheduling of licensing examinations, preparation of examinations, and process for examination candidates not achieving a passing score to qualify for reexamination. No substantive changes are being proposed.

N.J.A.C. 8:7-1.9 establishes the requirement for the Public Health Licensing and Examination Board to keep minutes of its meetings. No changes are proposed.

N.J.A.C. 8:7-1.10 establishes the qualifications of candidates for licensure. The proposed amendments will remove reference to the Department of Higher Education from the rules since that agency is no longer in existence. In addition, the proposed amendments eliminate the listing of qualifications for all license categories other than Health Officer and Sanitary Inspectors first grade. The license categories of Sanitary Inspector, second grade, Food and Drug Inspector, Meat Inspector, Veterinary Meat Inspector, Plumbing Inspector, first grade, Plumbing Inspector, second grade, and Public Health Laboratory Technician are proposed to be eliminated from N.J.A.C. 8:7-1.1 since they are either obsolete or currently administered by other state agencies. Therefore, a listing of qualifications is not appropriate.

New rules have been proposed at N.J.A.C. 8:7-1.11 thru 1.18 and are pending. The full text of the new rules can be found in the January 17, 1995 New Jersey Register, at 27 N.J.R. 267(a).

Social Impact

The proposed readoption with amendments of N.J.A.C. 8:7, concerning the licensure of persons for public health positions, shall continue to have a beneficial social impact. The readoption with amendments of these rules shall continue to allow the Public Health Council and the New Jersey State Department of Health to meet the legislative mandate of N.J.S.A. 26:1A-38 et seq., in prescribing the qualifications for the examining and licensing of public health officials in New Jersey. Readoption shall also continue to ensure that persons employed in public health positions possess the proper training and experience necessary to protect the public's health. Furthermore, readoption with amendments of these rules shall continue to ensure that persons employed in public health positions will maintain a working knowledge of the latest public health research and technology needed to resolve current public health problems.

Economic Impact

The readoption of these rules will allow the Department to collect fees for the examination, in the amount of $25.00, and licensure fees in the amount of $10.00, from public health officials, as required by N.J.S.A. 26:1A-39 and 42, thus allowing the Department to collect approximately $16,000 annually in fees, to be utilized to partially defray the cost of the program. The cost to administer the program is approximately $50,000 per year. The beneficial economic impact derived by the public from the presence of qualified personnel in public health positions cannot be specifically determined, but is derived from the economic effect of the prevention of disease and illness.

Executive Order Number 27 Statement

An Executive Order No. 27 analysis is not required because the requirements of the rules are dictated by New Jersey statute, N.J.S.A. 26:1A-38 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

The proposed readoption with amendments applies to all individuals seeking a license for Health Officer or Sanitary Inspector, first grade, in New Jersey. Since only individuals, and not small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are affected by the rules proposed for readoption, a Regulatory Flexibility Analysis is not required.

Full text of the proposed readoption may be found in the New Jersey Administration Code at N.J.A.C. 8:7.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

8:7-1.1 Positions requiring a license

(a) A license granted by the New Jersey State Department of Health is required for any person who is employed as a:

1. Health officer; **or**
2. Sanitary inspector, first grade[;].
[3. Sanitary Inspector, second grade;
4. Food and Drug Inspector;
5. Milk Inspector;
6. Meat Inspector;
7. Veterinary Meat Inspector;
8. Plumbing Inspector, first grade;
9. Plumbing Inspector, second grade;
10. Public Health Laboratory Technician.]

8:7-1.2 New Jersey Public Health Licensing and Examination Board

(a)-(c) (No change.)

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(d) The Board shall be composed of 11 members appointed by the Commissioner of Health as follows:

1. One of the members of the Board shall represent the Commissioner of Health. The Commissioner's representative shall be the [Deputy Commissioner or] Assistant Commissioner responsible for [Local Health Development Services] **local health operations** or shall be selected from professional staff of that unit. The individual shall serve as the Chairperson of the Board.

2.-7. (No change.)

(e)-(l) (No change.)

8:7-1.3 Submission of evidence of qualification

(a) The State Commissioner of Health, in the name of the New Jersey State Department of Health, shall grant licenses only to those candidates who submit evidence of the required training and experience, are accepted for testing by the Public Health [Examining] **Licensing and Examination** Board and/or the Commissioner of Health, and who subsequently pass examinations, indicating their fitness for the positions they seek.

(b) A person who desires to be admitted to an examination may obtain an application form from the New Jersey State Department of Health, [P.O. Box 1540,] **3635 Quakerbridge Road, CN 369,** Trenton, New Jersey 08625. The application shall be filed with the department and accompanied by documentary evidence satisfying the education, training, and experience requirements for the position. Such documentary evidence shall include an evaluation of the candidates performance written by the supervisor(s) working experience.

(c) (No change.)

8:7-1.7 Suspension or revocation of license

(a) Any license issued in accordance with the provisions of P.L. 1947, c.177 (N.J.S.A. 26:1A-41) and the rules governing the licensing of health officers and sanitary inspector, first grade, heretofore issued by the **New Jersey** State Department of Health, may be suspended or revoked for any of the causes as defined in Section 43 of P.L. 1947, c.177 (N.J.S.A. 26:1A-43).

(b) (No change.)

8:7-1.8 Examinations

(a) The **New Jersey** State Department of Health shall schedule examinations for the licensure of persons for public health positions at least twice a year.

(b)-(c) (No change.)

8:7-1.10 Qualifications of candidates for licensure

(a) Regarding the qualifications of health officer candidates, applicants shall meet one of the following qualifications:

1. (No change.)

2. Degree of doctor or master from an accredited college or university program in a health-related field [(recognized as such by the New Jersey Department of Higher Education and/or Education, as appropriate)] **recognized as such by the Department of Education** such as medicine, osteopathy, veterinary medicine, public health, environmental science, health administration, social work, nursing or health education. The core course work for the degree shall include or be supplemented by at least three credits in each of the following: planning, administration, environmental science, social science and epidemiology; and

i. (No change.)

3. (No change.)

(b) Sanitary inspector, first grade, qualifications are as follows:

1. A baccalaureate degree from an accredited college or university recognized as such by the Department of [Higher Education and/or] Education, [as appropriate] with a minimum of 32 credits in the biological sciences, physical sciences, environmental sciences, and mathematics; and

2. Successful completion of a course in [environmental health and law] **the environment and public health** conducted by an accredited college or university recognized as such by the [Departments of Higher Education and/or Education as appropriate] **Department of Education.** This course must be equivalent to that offered by Rutgers—The State University; and

3. Successful completion of a field training course approved as such by the **New Jersey** State Department of Health. Full-time employment for a minimum period of one year in a local health agency (under the supervision of either licensed health officer or sanitary inspector, first grade), as defined in "Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey," **N.J.A.C. 8:52,** will be accepted in lieu of the field training course only if an approved field training course is not available.

4. (No change.)

[(c) The qualifications for sanitary inspection, second grade, are as follows:

1. Satisfactory completion of a two-year associate degree course in a recognized college or university or two years of training in a recognized college or university, recognized as such by the Departments of Higher Education and/or Education, as appropriate, with satisfactory completion of 60 credit hours. The collegiate training shall include credits in the biological and/or physical sciences; and

2. Successful completion of a course in environmental health and law conducted by an accredited college or university recognized as such by the Departments of Higher Education and/or Education, as appropriate. This course must be equivalent to that offered by Rutgers—The State University. Equivalent training and/or experience may be accepted in lieu of completion of the environmental health and law course. The academic qualification is a basic requirement and no substitution is to be accepted.

3. What a candidate for sanitary inspector, second grade license, should know:

i. The sanitary inspector is responsible for making inspections, compiling proper records of such inspections, informing operators of establishments of violations, the sanitary basis thereof, methods of abating such violations, and securing evidence that may be necessary for legal action. Such inspections shall be in all environmental sanitation activities particularly those indicated in the "Recognized Public Health Activities and Minimum Standards of Performance for Local Health Departments in New Jersey". Applicants are examined relative to these indicated activities.

(d) The qualifications for food and drug inspector are as follows:

1. The applicant must hold a license for sanitary inspector, first grade; or

2. Have the qualifications equivalent to those required of a sanitary inspector, first grade, and show evidence at the licensure examination (food and drug inspector) to the satisfaction of the examining board of adequate knowledge of the basic sanitary sciences, such knowledge being equivalent to that possessed by a person having a license for sanitary inspector, first grade; and

i. The applicant must also indicate one year's full-time working experience in food and drug control under the supervision of a license health officer.

3. What a candidate for food and drug inspector license should know:

i. The food and drug inspector is responsible for making inspections, compiling proper records of such inspections, informing operators of establishments of violations, the sanitary basis thereof, methods of abating such violations, and securing evidence that may be necessary for legal action. Applicants are examined relative to these activities.

(e) The qualifications for milk inspector are as follows:

1. The applicant must hold a license for sanitary inspector, first grade; or

2. Have the qualifications equivalent to those required of a sanitary inspector, first grade, and show evidence at the licensure examination (milk inspector) to the satisfaction of the examining board of adequate knowledge of the basic sanitary science, such knowledge being equivalent to that possessed by a person having a license for sanitary inspector, first grade ; and

i. The applicant must also indicate one year's full-time working experience in milk control under the supervision of a licensed health officer.

3. What a candidate for milk inspector license should know: The milk inspector is responsible for making inspections, compiling proper records of such inspections, informing operators of establishments of violations, the sanitary basis thereof, methods of abating such violations, and

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securing evidence that may be necessary to legal action. Applicants are examined relative to these indicated activities.

(f) The qualifications for veterinary meat inspector are:

1. Graduation from a generally recognized school of veterinary medicine, recognized as such by the Departments of Higher Education and/or Education, as appropriate; and

i. Knowledge and skill in the theory and practical application of sanitary sciences, specially in the field of food control.

2. What a candidate for veterinary meat inspector should know. The candidate should be prepared to answer questions covering the public health aspects of the slaughtering and processing of meat. This includes both red meat and poultry. Specifically included may be the following:

i. Basic principals of meat inspection and their application to public health;

ii. State and Federal laws regarding inspection of meat and its products;

iii. Methods of sanitation and types of compounds that may be used in the sanitizing of slaughter houses, meat markets and meat processing plants;

iv. Preservatives that are allowed and those not allowed in meat and its products;

v. Legal methods of sampling meat and its products;

vi. Diseases of animals where carcasses are used for meat or meat products, and whether such diseases are transmissible to humans. Proper disposition of infected and inedible carcasses in accordance with State Health Department regulations;

vii. Elements of a safe water supply and satisfactory method of sewage disposal;

viii. Each candidate may be asked to display his knowledge of inspection and processing techniques in an actual practical examination.

(g) The qualifications for meat inspector are:

1. Except for the substitution of education provided for in 2 below, applicants for meat inspector license must have had, since their 16th birthday, at least three years of experience in one or any combination of the following:

i. Experience with animals such as that gained in the capacity of an assistant to a veterinarian or in field disease control activities;

ii. Experience with livestock or poultry such as that gained in a public stockyard, in the manufacture or preparation of veterinary biological products, or on a ranch, farm or hatchery in the management or handling of livestock or poultry, or in some other comparable activity;

iii. Experience with livestock or poultry slaughtering or poultry or meat processing, an experience in marketing or handling meat or poultry at wholesale or retail outlets;

iv. Experience in dairy, poultry, meat or other food processing in plants or activities where sanitary measures and quality controls are applied;

v. Experience (such as laborer, guard, sales clerk, and so forth), in the activities described above, which does not provide an intimate knowledge of livestock or poultry, livestock slaughtering or meat, dairy or other food processing will not be qualifying. The total training and experience of an applicant must show that he possesses the ability to comprehend, interpret, explain and apply regulations and instruction pertaining to the duties of a meat or poultry inspector, and show that he can meet and deal satisfactorily with employees and officials of poultry eviscerating or processing plants, or meat packing establishments;

2. Educational substitution (maximum of three years of experience) rules are:

i. Satisfactory completion of a full four-year course of accredited high school study which has included at least two one-year courses in biology, general science, chemistry or appropriate agricultural subjects, or a time-equivalent combination of these subjects, may be substituted for one year of the experience required; or

(1) Satisfactory completion of the courses entitled "Inspection of meat and meat products" offered by Rutgers University Extension Division in cooperation with the New Jersey State Department of Health may be substituted for one year of the experience required; or

ii. Each successfully completed year of study in a residence school above the high school level may be substituted for nine months of required experience, provided that such study included an average of at least six semester hours (or equivalent) per year in one or in any combination of subjects of zoology, biology, chemistry or appropriate agricultural subjects;

3. What a candidate for meat inspector license should know: The candidate should be prepared to answer questions covering the public health aspects of the slaughtering and processing of meat. This includes both red meat and poultry. Specifically included may be the following:

i. Basic principles of meat inspection and their application to public health, and why inspectors look at glands, tissues and organs;

ii. State and Federal laws requiring inspection of meat and its products;

iii. Methods of sanitation of slaughter houses, meat markets and meat processing plants;

iv. Preservatives that are allowed and those not allowed in meat and its products;

v. Legal methods of sampling meat and its products;

vi. Common disease of animals whose carcasses are used for meat and its products;

vii. Principles and procedures to be followed in conducting a postmortem examination under supervision of a veterinary meat inspector, and the normal from abnormal tissue appearance of all food animals;

viii. Each candidate may be asked to display his knowledge of inspection and processing techniques in an actual practical examination. Questions on the practical examination will be of the type to determine knowledge or location and function of the liver, kidney, spleen, heart, lungs, and their surrounding and protective tissues, as well as lymph glands—all on actual carcasses under actual inspection procedures;

ix. In addition, each candidate should be able to demonstrate his ability to handle inspection equipment, such as knives, hooks and trays, and to sharpen a knife, if on his observation it needs sharpening to allow him to utilize same in his inspection procedures.

(h) The qualifications for plumbing inspector, first and second grade, are:

1. Possess a New Jersey professional engineer's license, plus successful completion of the advanced course in plumbing regulation and inspection at Rutgers University, or its equivalent; or

2. Possess a license for sanitary inspector, first grade, at least five years full-time working experience in the plumbing trade, plus successful completion of the advanced course in plumbing regulation an inspection at Rutgers University, or its equivalent; of

3. Graduation from high school or equivalent with at least ten years of full-time working experience as a journeyman or master plumber following an apprenticeship[1] of four years, plus successful completion of the basic course in plumbing regulation and inspection at Rutgers University, or its equivalent; or

4. Fourteen years as a journeyman or master plumber, plus successful completion of the basic course in plumbing regulation and inspection at Rutgers University, or its equivalent;

5. What a candidate for plumbing inspector license should know:

i. The candidate for plumbing inspector's license should have detailed knowledge of the proper methods and procedures for all types of plumbing installations used in private dwelling, industrial buildings, office buildings, and so forth, in order that the public health of citizenry be protected;

ii. A plumbing inspector should be able to administer a program which includes techniques of plumbing, method of inspection, enforcement procedures and record keeping.

iii. The candidate should be prepared in the following areas:

(1) Engineering principles of water purification and sewage disposal;

(2) Interpretation and corrections of plans for plumbing and drainage systems;

(3) Methods of testing plumbing systems, locating defects, and improper cross-connections and correcting the same;

(4) Principles of physics and hygiene which deal with the proper methods of removing waste water and sewage from buildings;

(5) Knowledge of standards for materials used in the installation of plumbing and drainage systems;

(6) Ability to draw plans of plumbing system showing soil waste and vent pipes, traps and fixtures;

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(7) Devices used in connection with plumbing systems;

(8) Hot water heaters and storage tanks, condensing tanks and blowoff tanks;

(9) Plumbing aspects of air conditioning and ventilating system;

(10) Knowledge of laws and State rules and regulations for installation of cross-connections between safe and unsafe water supplies;

(11) Methods of construction, location and operation of cesspools, septic tanks, small sewage disposal plants and private water supply systems;

(12) Principles of administration, record keeping and communications with public;

(13) Statutes relating to licensing, local board of health powers and State codes;

(14) Procedures for preparing cases for legal action.

(i) Public health laboratory technician rules are:

1. The qualifications for public health laboratory technician license are:

i. Formal education represented by graduation from a recognized college or university, recognized as such by the Departments of Higher Education and/or Education, as appropriate, with a major in the chemical or biological sciences, or its equivalent; or

ii. Certification as "registered technician" by the American Society of Clinical Pathologists in cooperation with the American Society of Medical Technicians;

iii. Graduation from a high school; at least one year of full-time experience in a laboratory performing bacteriological, serological, chemical or related technical laboratory tests. Completion of one year's successful training in a recognized school for laboratory technicians will be accepted in lieu of one year of full-time experience required above;

2. What a candidate for public health laboratory technician license should know:

i. The laboratory technician candidate should have special information and training in the handling, laboratory preparation and examination of specimens for identification of communicable disease organisms. Training should be in the following categories:

(1) Bacteriology: Knowledge of care and use of microscope; preparation of specimens for bacteriological examination; media, their uses and preparation; stains, their application and preparation; methods of sterilization; bacteriological examination of milk and water; and knowledge of laboratory techniques in the handling of infectious material;

(2) Chemistry: General background in chemistry with knowledge of the chemical techniques in blood, food and drug, sanitation, milk and milk products, drinking waters, streams, trade wastes and sewage;

(3) Pathology: Knowledge of preparation, embedding and staining of pathological specimens for examination; use of microtome, preparation of stains, and proper recording of specimens of tissue;

(4) Serology: Knowledge of techniques and principles involved in standard blood tests for syphilis, blood counts, blood grouping and Rh factor determination, and serological tests for communicable diseases;

(5) Virology knowledge and techniques involved in examination or studies of virus infections;

ii. The candidate has the privilege of selecting one of three booklet titles on the day of examination: "Bacteriology", "Pathology", or "Serology". It must be emphasized that each booklet contains a certain number of general questions in addition to those related to title.]

[[1]For the purpose of these qualifications, an apprenticeship is regarded as the first four years of full-time working experience in the plumbing trade under the supervision of a master plumber.]

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

MANUAL OF STANDARDS FOR COMMUNITY CARE RESIDENCES

Proposed Readoption: N.J.A.C. 10:44B

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:11B-1 et seq., specifically, 30:11B-4.

Proposal Number: PRN 1995-367.

Submit comments by July 19, 1995 to:
James M. Evanochko, Administrative Practice Officer,
Division of Developmental Disabilities
CN 726
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.S.A. 30:11B-1 et seq., "Community Care Residences for the Developmentally Disabled and the Mentally Ill," requires that the Division set appropriate standards for community residences.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:44B will expire July 16, 1995. The Department has reviewed the rules proposed for readoption and has determined them to be necessary and proper without amendment, for the purposes for which they were originally promulgated and is, therefore, proposing them for readoption at this time.

This chapter was originally filed and became effective July 16, 1990. A summary of the sections of N.J.A.C. 10:44B follows:

N.J.A.C. 10:44B-1 establishes the purpose and scope of the rules, which are designed to provide for the protection, supervision and enhancement of quality of life for developmentally disabled individuals who require personal guidance and who reside in community care residences regulated by this chapter. No changes have been proposed.

The severability clause at N.J.A.C. 10:44B-1.2 shall continue to be in effect.

Definitions at N.J.A.C. 10:44B-1.3 are referenced to state or Federal law or Departmental and/or Division policy and procedure and are current in regards to those laws, policies and procedures. No changes have been proposed.

Notwithstanding the reorganization of the Division of Developmental Disabilities, the application and licensing process as described at N.J.A.C. 10:44B-1.4, 1.5 and 1.6 remains unchanged.

N.J.A.C. 10:44B-2 describes the administrative requirements for licensure, including the requirements for the licensee, and the requirements for placements, departures and recordkeeping. No changes have been proposed.

N.J.A.C. 10:44B-3 describes the requirements for protecting individual rights, for assuring personal hygiene and the requirements for assuring that each individual receives an adequate diet and suitable clothing. No changes have been proposed.

N.J.A.C. 10:44B-4 contains the requirements for assuring that an Individual Habilitation Plan (IHP) is developed for each individual receiving services, that appropriate training as described in the IHP is provided in the community care residence and that individuals are provided the opportunity to participate in a day program. No changes have been proposed.

N.J.A.C. 10:44B-5 sets forth the requirements pertaining to general medical and health care for individuals receiving services, the rules pertaining to proper administration of prescribed medication, safe storage of medications, the requirements for maintaining accurate records regarding the administration of prescribed medications and the provision of training for individuals, where appropriate, to learn to self-administer their medications. No changes have been proposed.

N.J.A.C. 10:44B-6 describes the physical plant and fire safety requirements for community care residences. The requirements for individual room size are also described. No changes.

Social Impact

The proposed readoption without amendments will have a positive social impact in that the rules will enable the Department to continue to provide protection to individuals receiving services who require personal guidance in community care residences, and to continue to develop such residences according to legislative mandate and rule requirements. The development of

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such residences over the past five years has enabled the Department to realize a net gain of approximately 800 beds in community care residence placements Statewide. In addition, the readoption of these rules will enable the Department to comply with Governor Whitman's plan to decrease placements at State developmental centers while increasing community placements.

Economic Impact

The readoption of these rules will have no significant economic impact. No additional supplies, equipment or costs are expected to be required for licensees or the Department as a result of the readoption of these rules. The rules require minimal expenditures, such as smoke detectors and fire extinguishers commonly used in many households. Any additional accommodations, such as linens, and personal furniture, would either be those already present in the home, or would be expenditures which could be made from the developmentally disabled client's S.S.I. payments.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required, as, at this time, no Federal regulations governing community care residences are codified.

Regulatory Flexibility Analysis

The proposed readoption may affect small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. However, these small businesses, essentially "foster-home-type" placements, in which the family shares its home with a developmentally disabled person or persons, should not be exempt from the rules, due to the overriding concern for the health, safety, welfare and rights of the developmentally disabled individuals living in community care residences. The recordkeeping requirements imposed on small businesses by this rule do not differ from those imposed in previous rules promulgated by the Department for such residences. There are no professional services required by the rules, and the sponsors are reimbursed for expenses they incur on the clients' behalf.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:44B.

(a)

DIVISION OF FAMILY DEVELOPMENT

Ruling 11

Economic Assistance Staff Development Program Proposed Readoption with Amendments: N.J.A.C. 10:109

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:10-3.

Proposal Number: PRN 1995-368.

Submit comments by July 19, 1995 to:
Karen Highsmith, Acting Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the "sunset" provisions of Executive Order No. 66(1978), the Department of Human Services proposes to readopt N.J.A.C. 10:109, which is scheduled to expire February 4, 1996.

N.J.A.C. 10:109-1.1 sets forth the objectives of the public assistance staff development program, and describes the relationship that staff development and training has to agency goals.

N.J.A.C. 10:109-1.2 contains certain detailed information concerning county welfare agency training and staff development personnel. The purpose of this section is to delineate the responsibility of the training and staff development function of the agency.

N.J.A.C. 10:109-1.3 contains information concerning the overall objectives and guidelines for establishing a training advisory committee. The committee shall be chaired by the training supervisor and shall include representation from clerical, para-professional, professional, supervisory, administrative staff and/or any other group deemed necessary by the agency.

N.J.A.C. 10:109-1.4 contains information about the required components of the staff development and training program. Required components of a CWA staff development program shall include a mandated orientation program for new employees, ongoing training related to each of the public assistance programs supervised by the DFD and administered by the CWA, ongoing training concerning the use of all required management information systems, a training program which provides for necessary skills development of CWA managers and supervisors, a general skills development program for all agency staff based on individually assessed needs related to current job responsibilities, and career/professional development opportunities for all staff which are offered as a means for upward mobility within the agency.

N.J.A.C. 10:109-1.5 contains information as to the required reporting of training activities. Specific reference is made to the reporting of training activities to the Department's Division of Family Development.

The Department's Division of Family Development has recently conducted a review of N.J.A.C. 10:109 prior to this proposed readoption. After the review, it was determined that the rules are adequate, reasonable and responsive to the purpose for which they were promulgated. There has not been any change to this chapter since the last readoption.

As a result of the continuous review process, the following changes are being proposed at this time as part of the proposed readoption of N.J.A.C. 10:109:

Revisions in grammar, capitalization, and sentence structure have been included to improve clarity at N.J.A.C. 10:109-1.2, 1.3, 1.4(a), 1.4(a)1, 1.4(a)3, 1.4(a)5, 1.4(a)6 and 1.5.

Reference to the Management Development Institute (MDI) is being deleted at N.J.A.C. 10:109-1.4(a)4, since the MDI no longer exists.

Reference to the Program to Reinforce Income Maintenance Development and Effectiveness (PRIDE) Program and Tuition Reimbursement are deleted at N.J.A.C. 10:109-1.4(a)5. The PRIDE program no longer exists, since it was geared to specific CWA staff (Income Maintenance) and the training goals were met. Tuition reimbursement is covered under N.J.A.C. 10:109-1.4(a)6.

The proposed amendment at N.J.A.C. 10:109-1.4(a)6 deletes the provision that a participant must pursue an academic degree. Participants in the program no longer have to pursue a degree.

The proposed amendment at N.J.A.C. 10:109-1.5 provides that the DFD must preapprove cost related out-service training since a training office no longer exists in the DFD. All training responsibilities were transferred to the newly formed Human Resource Development Institute, but approval authority over CWAs remained with the DFD.

Social Impact

N.J.A.C. 10:109 provides the counties with a mechanism for use in conjunction with the Department's efforts to develop staff knowledge and skills, thereby upgrading the quality of the services provided to recipients of public assistance. The readoption of N.J.A.C. 10:109 is necessary to ensure the continuation of the staff development program. If the chapter is not readopted, staff training in the county welfare agencies would have no direction and may be subject to reduction or discontinuation. This could adversely impact the quality of services provided to public assistance clients. The proposed amendments throughout N.J.A.C. 10:109 that reflect technical changes for clarity purposes, or provide grammatical or capitalization change will not have any social impact. The proposed amendment at N.J.A.C. 10:109-1.4(a)4 has no social impact inasmuch it merely deletes reference to the Management Development Institute which no longer exists. The proposed amendment at N.J.A.C. 10:109-1.4(a)5 which deletes reference to obsolete programs will not have a social impact. The proposed amendment at N.J.A.C. 10:109-1.4(a)6 will provide staff with the opportunity to take courses more relevant to serving client needs, without needing to pursue a degree. The proposed amendment at N.J.A.C. 10:109-1.5 which deletes reference to the non-existing "training office" will not have a social impact inasmuch as approval is still needed from the DFD.

Economic Impact

The regulatory provisions at N.J.A.C. 10:109 enable the staff of the county welfare agencies to acquire the training essential to the delivery of services needed by New Jersey's disadvantaged population in a cost-efficient manner. The expenditure of public funds for programs administered by the county welfare agencies approximates 1.1 billion dollars. In view of such a level of expenditure, the need for continuation of a comprehensive staff development program is self-evident. The proposed amendments throughout N.J.A.C. 10:109 that reflect technical changes for clarity purposes, or provide grammatical or capitalization change will not have any economic impact. The proposed amendment at N.J.A.C. 10:109-1.4(a)4 has no economic impact inasmuch as it merely deletes reference to the Management Development

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Institute which no longer exists. The proposed amendment at N.J.A.C. 10:109-1.4(a)5 which deletes reference to obsolete programs will not have an economic impact. The proposed amendment at N.J.A.C. 10:109-1.4(a)6 which provides staff with the opportunity to take courses more relevant to serving client needs, without needing to pursue a degree, will not force an agency to fund a program which could prove to be more costly. The proposed amendment at N.J.A.C. 10:109-1.5 which deletes reference to the non-existing "training office" will not have an economic impact inasmuch as approval is still needed from the DFD.

Executive Order No. 27 Statement

The requirements contained in these rules are not subject to any Federal requirements or standards; therefore, a Federal exceedance analysis is not required.

Regulatory Flexibility Statement

This chapter has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impose no reporting, recordkeeping or other compliance requirements on small businesses; therfore, a regulatory flexibility analysis is not required. The rules govern the education and training required by agency staff to support a public assistance program. Such rules are designed to certify eligibility for public assistance by a governmental agency, rather than a private business establishment.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:109.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

10:109-1.2 County welfare agency training and staff development personnel

The director of [a] **the** CWA shall be responsible for the administration of the training and staff development function of the agency. A training supervisor as well as additional trainers and support staff shall be employed in accordance with yearly budget instructions issued by the Division of Family Development (DFD) and CWA needs, [thereby] **therefore** adequately providing for all required components of the staff development and training program as listed in N.J.A.C. 10:109-1.4

10:109-1.3 Training advisory committee

Each CWA shall establish a training advisory committee which assists with the development of [the required] annual training [plan,] **plans** and provides guidance, direction, and recommendations concerning the agency's overall policies and procedures for staff development and training. The committee shall be chaired by the training supervisor and shall include representation from clerical, para-professional, professional, supervisory, administrative staff and/or any other group deemed necessary by the agency.

10:109-1.4 Components of the staff development and training program

(a) Staff development and training activities **as determined by ongoing yearly needs assessments conducted by CWA training staff** will be provided through the use of [both] in-service **resources** and out-service [resources,] when funding is available [and as determined by ongoing yearly needs assessments conducted by CWA training staff]. Required components of a CWA staff development program shall include:

1. A mandated orientation program for **all** new employees which shall include topics such as affirmative action, civil rights, and Acquired Immune Deficiency Syndrome (AIDS) awareness;

2. (No change.)

3. Ongoing training concerning the use of all required management information systems such as **the** Family Assistance Management Information System (FAMIS), Automated Child Support Enforcement Systems (ACSES), and On-line Management of Economic Goal Achievement (OMEGA);

4. A training program which provides for necessary skills development of CWA managers and supervisors, such as the Certified Public Managers Program [or courses offered through the Management Development Institute];

5. A general skills development program for all agency staff based on individually assessed needs **as** related to current job responsibilities. This would include programs such as Effective Writing, Communication Techniques, and Computer Literacy[, Tuition Reimbursement, as well as those courses available through DFD's Program to Reinforce Income Maintenance Development and Effectiveness (PRIDE) Program]; and

6. Career/professional development opportunities**, as funds permit,** for all staff which are offered as a means for upward mobility within the agency through such [activities] **programs** as tuition reimbursement [for the purpose of attaining an academic degree].

10:109-1.5 Required reporting and approvals

[The reporting] **A record** of all training activities by an agency's staff development operation must be **maintained** on a monthly basis **and submitted** in accordance with DFD issued instructions. Plans for cost related out-service training activities/**expenditures** must [be discussed with and] receive the prior approval [of the Training office] of the DFD. If such activities are included in an approved annual training plan and/or budget, additional approval shall not be necessary.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF DENTISTRY

Fee Schedule Increases

Proposed Amendment: N.J.A.C. 13:30-8.1

Authorized By: State Board of Dentistry, Stephen Candio, D.D.S., President

Authority: N.J.S.A. 45:6-3 and 45:1-3.2.

Proposal Number: PRN 1995-373.

Submit written comments by July 19, 1995 to:
Agnes Clarke, Executive Director
State Board of Dentistry
Post Office Box 45005
Newark, NJ 07101

The agency proposal follows:

Summary

The Board of Dentistry proposal to amend its fee schedule at N.J.A.C. 13:30-8.1 in regard to application fees, biennial registration fees, and fees for other administrative services as set forth below first was proposed on September 7, 1993 at 25 N.J.R. 3927(a). The proposal subsequently was adopted by the Board without change effective upon publication on November 15, 1993 at 25 N.J.R. 5352(d). The adopted amendments became the subject of an appeal by the New Jersey Dental Association (*In the Matter of the Adoption of an Amendment to N.J.A.C. 13:30-8.1,* Dkt. No. A-1326-93T5). In an unreported decision filed by the Appellate Division on March 31, 1995, the Court reversed and remanded so that the New Jersey Dental Association could have access to data supporting the estimated expenses and projected revenues for the fiscal years covering the biennial renewal period. The Court found that there was insufficient underlying information in the initial record to support the rule amendment, and therefore, objectors such as the Association were not able to make meaningful comment. Accordingly, the Court concluded that some limited inquiry of the supporting data should be permitted to objectors.

In response to the Appellate Division decision, a budget and fee review document in excess of 70 pages was assembled by a fiscal officer in the Division of Consumer Affairs. This document is similar in many respects to the budget and fee review document developed for the 1995-1997 biennial renewal period. Further amendments to the Board's fee schedule for the 1995-1997 registration at N.J.A.C. 13:30-8.1 are published in a separate proposal in this issue of the New Jersey Register.

The advantage of the 1993 Board of Dentistry budget and fee review document is that the Board now is in a position to review actual data for expenses and revenues during the past biennial period and to make estimates and projections only for what remains of fiscal year 1995. Therefore, the Board's evaluation of the propriety of the 1993 fee structure is, in fact, a determination of whether the projected budget and fees developed in 1993 were reasonable in light of the actual data currently available.

The 1993 budget documents include a general description of the specific object codes on the Board's Fee Review, the original 1993 budget and fee

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review, a revised fee review showing actual fiscal year 1993 and 1994 data as well as revised fiscal year 1995 projections, Board expenditure details setting forth breakdowns in the major object categories, evaluations of numbers of dentist license renewals, rent projections, legal billings, and other supporting data. A copy of the budget document may be obtained by any interested person or may be made available for inspection by contacting the Board's Executive Director, Agnes Clarke, at the above stated address. A review of the historical data also was a substantial part of the 1995 budget and fee review which was presented and explained in detail at public Board meetings held on April 5 and April 19, 1995. That information insofar as it is relevant to this retrospective review of the 1993 budget, will be considered in the Board's evaluation of this proposal at this time.

All professional and occupational licensing boards must fund their operating costs through the assessment of licensing and other fees pursuant to N.J.S.A. 45:1-3.2. The statute further requires the fees to be charged to the extent necessary to defray all proper expenses incurred by the Board in the performance of its duties, so long as such fees do not raise amounts in excess of the amount estimated to be required. The proposed fee schedule complies with these statutory standards.

Several areas of increased expenses support the Board's proposal to increase fees. The costs of the Enforcement Bureau, the Board's investigative arm, are projected to increase in fiscal year 1995 by 24.25 percent as a result of the fact that all professional boards for the first time must contribute to the payment of fringe benefits for Bureau staff. The rate paid for these benefits is established by the Treasury and is based upon the current union contract. These benefits previously were paid out of the general treasury and were not anticipated when the 1993 budget was developed. Therefore, expenditure in this category actually was higher than projected.

In addition, there appears to be an increase in the number of investigative hours utilized in fiscal year 1995. There has been an increased need to conduct dental office inspections based on patient complaints and concerns about compliance with standards for infection control as well as increased awareness and reporting of insurance fraud matters. There also appears to be an increase in the number of reports of the unlicensed practice of dentistry which often require time consuming investigations.

Another area of increased expenditure results from the Division of Consumer Affairs' contract in fiscal year 1995 with the Division of Law (DOL) for additional Deputy Attorneys General (DAGs) available to the Board. Although the Board used DOL time in fiscal year 1994 equal to approximately 2.33 DAGs, the Board was charged only for approximately 1.89 DAGs pursuant to the 1994 contract provisions. As a result, the Board actually saved over $45,000 in that it was not billed for all actual hours worked by DAGs on behalf of the Board. In fiscal year 1995 the DOL fees for the Board will reflect accurately the actual number of DAG service hours. Accordingly, the Board's budget must incorporate an increase for legal services.

A major issue in the appeal of this fee increase was a charge that the Board was underestimating the number of licensees. The 1993 fee review projected renewals by 7,200 active dentists, the largest category of licensees. Revenues of $1,152,000 were estimated in this category at the increased fee of $160.00. However, from November 1, 1993 to October 31, 1994, the Board collected the full fee of $160.00 for renewals and new licenses from 6,863 dentists. After October 31, 1994 there were 89 additional licenses issued at half of the fee or $80.00. Even anticipating an additional 180 licenses issued at $80.00 for the remainder of this renewal period the total revenue from active dentists will be $1,119,600 or $32,400 less than estimated in 1993. Accordingly, the Board actually overestimated the number of licensees rather than underestimated when it made its projections in 1993.

There appears to be a number of factors contributing to this apparent decrease in licensees. First, fewer persons apparently are entering the profession in this state. The Board issued approximately 359 new dentistry licenses in 1994 as opposed to 529 new licenses in 1984. In addition, the mandatory continuing education requirements effective for the first time during this biennial licensing period apparently have caused a number of dentists who were maintaining active dental licenses to convert to inactive or retired license status for which continuing education is not required but for which there is a corresponding lower or no licensing fee. Some licensees who are not actively practicing in this State may have decided that it no longer served their interests to maintain licensure in New Jersey, and some licensees may have failed to renew because they could not meet the continuing education or other regulatory requirements for licensure. However, in order to carry out the statutory mandate that Boards assess licensing fees to cover expenses, the increased costs must be distributed among fewer licensees resulting in each licensee paying a slightly larger share than in previous budgets.

Another factor contributing to what appears to be a substantial increase in fees in one registration period is the fact that the Board received a totally unexpected revenue in 1990 by virtue of the collection of a penalty paid by a licensee in the amount of $375,000. That revenue amounted to a windfall for the Board's budget and was spent by paying expenditures incurred in 1990. As a result, the Board was able to carry over the money saved to the next biennial licensing period. Accordingly, there was no increase in the 1991-1993 registration period even though expenditures continued to increase. Using active dentist renewals as an example, the apparent 60 percent increase really is a 15 percent increase per year over a four year period.

It is important to note that this amended fee schedule is not being proposed in order to implement new programs to be provided by the Board. There is no provision for major new initiatives in this budget. Rather, these fee increases are being proposed out of necessity so that the Board may continue to fulfill its legislative mandate to regulate the practice of dentistry and protect the health and welfare of all New Jersey patients. The fee increases merely will permit the Board to provide the same level of services.

This proposal raises the application fees at N.J.A.C. 13:30-8.1(a) in each of the licensee categories. The registration fees in all categories set forth at N.J.A.C. 13:30-8.1(b) also are the subject of proposed increases. For example, active registration for dentists will be increased from $100.00 to $160.00; active registration for dental hygienists will be increased from $30.00 to $50.00; and active registration for registered dental assistants will be increased from $30.00 to $50.00. There are corresponding increases in the inactive categories as well as for branch office registrations.

Also proposed are five new categories of fees at N.J.A.C. 13:30-8.1(d): registration of dentists by reciprocity, registration of dental hygienists by credentials, verification of licensure, duplicate wall certificate and duplicate license. These new fees are necessary to cover the Board's administrative costs for processing these applications and issuing duplicate credentials.

Social Impact

The proposed fee increases, which will affect all applicants for licensure and current licensees of the Board of Dentistry, are necessary to generate revenues to defray all proper expenses incurred by the Board in fulfilling its statutory obligation to evaluate applicants for licensure and to regulate the practice of dentistry in the State of New Jersey. The new fee schedule will provide the Board with the minimum financial resources to carry on its responsibilities to protect the public health, safety and welfare by ensuring professional competence and the maintenance of high professional standards.

Economic Impact

All dentists, dental hygienists, and dental assistants will be affected by these amendments in that they will be required to pay higher application fees. If these fee increases are not implemented at this time, the Board will be unable to continue to comply with its statutory obligation to be self-funding. The Board points out, however, that the fees proposed to be amended have not been raised in four years because substantial unanticipated revenues during the preceding biennial period averted the need for licensing fee increases. $30.00 per year for dentists and $10.00 per year for dental assistants are, as a business expense, reasonable, and, therefore, the Board does not anticipate higher charges to patients as a result of this amendment.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements pertaining to a fee increase are governed by N.J.S.A. 45:1-3.2 and are not subject to any Federal requirements or standards.

Regulatory Flexibility Analysis

If, for the purpose of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., individual practicing dental professionals are deemed "small businesses" under the provisions of the Act, the following analysis applies:

The proposed fee increases will affect all of the approximately 10,150 licensed dentists, 2,225 dental hygienists, 1,800 hygienist specialists and 1,200 dental assistants based upon 1993 estimates. The only compliance requirement consists of paying increased biennial registration fees in a timely manner. There are no reporting or recordkeeping requirements and no professional services are necessary in order to comply. Since the fees have been set at the lowest amount that will cover the Board's operating expenses the intent of the Regulatory Flexibility Act, which is to minimize the adverse economic impact on small businesses has been implemented.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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13:30-8.1 Fee schedules

(a) The application fees charges by the Board of Dentistry shall be the following:

1. Dentists ..... [$ 75.00] **$125.00**
2. Dentists Hygienists ..... [$ 50.00] **$ 75.00**
3. Dental Hygienists—expanded duties supplement ..... [$ 10.00] **$ 25.00**
4. Registered Dental Assistants ..... [$ 15.00] **$ 35.00**

(b) The Biennial Registration fees charged by the Board of Dentistry shall be the following:

1. Dentists:
i. Active registration ..... [$100.00] **$160.00**
ii. Inactive registration ..... [$ 40.00] **$ 70.00**
iii. Branch Office ..... [$ 20.00] **$ 40.00**
2. Dental Hygienists:
i. Active registration ..... [$ 30.00] **$ 50.00**
ii. Inactive registration ..... [$ 10.00] **$ 20.00**
iii. Branch office ..... [$ 10.00] **$ 20.00**
3. Registered Dental Assistants:
i. Active registration ..... [$ 30.00] **$ 50.00**

(c) (No change.)

(d) Other fees:

1.-2. (No change.)

3. Registration of dentists by reciprocity—application fee **$250.00**

4. Registration of dental hygienists by credentials—application fee **$125.00**

5. Verification of licensure ..... **$ 25.00**

6. Duplicate wall certificate ..... **$ 50.00**

7. Duplicate license ..... **$ 50.00**

(e) (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY
Fee Schedule Increases
Proposed Amendment: N.J.A.C. 13:30-8.1

Authorized By: State Board of Dentistry, Stephen Candio, D.D.S., President.

Authority: N.J.S.A. 45:6-3 and 45:1-3.2.

Proposal Number: PRN 1995-374.

Submit written comments by July 19, 1995 to:
Agnes Clarke, Executive Director
State Board of Dentistry
Post Office Box 45005
Newark, NJ 07101

The agency proposal follows:

Summary

The Board of Dentistry (Board) proposes to amend its fee schedule in several categories in order to pay anticipated increases in expenditures including salaries and investigative, administrative and legal costs. These fee increases will affect an estimated 9,750 active and inactive dentists, 1,625 dental assistants, 4,235 active and inactive dental hygienists, and 2,855 branch office licenses.

All professional and occupational licensing boards must fund their operating costs through the assessment of licensing and other fees pursuant to N.J.S.A. 45:1-3.2. The statute further requires the fees to be charged to the extent necessary to defray all proper expenses incurred by the Board in the performance of its duties, so long as such fees do not raise amounts in excess of the amount estimated to be required. The proposed fee schedule complies with these statutory standards.

The Board's budget and fee review were developed by the Division of Consumer Affairs fiscal officer who develops such budgets for all of the professional and occupational boards. The fiscal officer worked in conjunction with the Board's administrative staff as well as the Board. As a result of this work the fiscal officer presented the Board with a 33 page budget document setting forth the budget and fee review as well as explanatory and supporting data and documents. A copy of the budget document may be obtained by any interested person or may be made available for inspection by contacting the Board's Executive Director, Agnes Clarke, at the above stated address. In addition, the fiscal officer met with the entire Board prior to its approval of the budget and proposed fee increases during public meetings on April 5 and April 19, 1995. At that time, the fiscal officer presented and explained the underlying historical data and the budget/fee review documents. The fiscal officer also answered questions from other Board members and interested members of the public attending both meetings.

Several areas of increased expenses support the Board's decision to raise licensing fees. The costs of the Enforcement Bureau, the Board's investigative arm, are projected to increase in fiscal year 1995 by 24.25 percent as a result of the fact that all professional boards for the first time must contribute to the payment of fringe benefits for Bureau staff. These benefits previously were paid out of the general treasury. Fringe benefits include payments made for retirement, social security, health and dental insurance contributions, workers' compensation, unemployment, and survivor's and disability insurance. The rate paid for these benefits is established by the Treasury and is based upon the current union contract.

An analysis of the actual hours spent by the Enforcement Bureau in fiscal year 1994 in the investigation of Dentistry Board cases requires allowance for future projected increases in Bureau services resulting in higher costs to the Board. The increased need to conduct dental office inspections based on patient complaints and concerns about compliance with standards for infection control, as well as increased awareness and reporting of insurance fraud and unlicensed dentistry matters, are some of the factors operating to increase investigative hours.

Another area of increased expenditure results from the Division of Consumer Affairs' contract in fiscal year 1995 with the Division of Law (DOL) for additional Deputy Attorneys General (DAGs) available to the Board. Although the Board used DOL time in fiscal year 1994 equal to approximately 2.33 DAGs, the Board was charged only for approximately 1.89 DAGs pursuant to the 1994 contract provisions. As a result, the Board actually saved over $45,000 in that it was not billed for all actual hours worked by DAGs on behalf of the Board. In fiscal year 1995 the DOL fees for the Board will reflect accurately the actual number of DAG service hours. Accordingly, the Board's budget must incorporate an approximate 25 percent increase for legal services.

Further increased expenditures in the budget projections are caused by salary increases for all State employees, including the eight employees of the Board of Dentistry. These increases are projected at up to seven percent each year for the next two years. Salary increases and corresponding costs of employee fringe benefits are determined by union contract. The anticipated increases are based on an average of increases experienced in the recent past and consist of a fiscal year 1996 union raise of three percent and anticipated anniversary merit increase raises of up to four percent. The salary figures detailed in the budget also include monies for a currently vacant clerical staff position which the Board hopes to fill during the next biennial period.

Increased fees must be viewed against a backdrop of fewer licensees. While Board operating costs continue to climb, estimates based on historical data anticipate a reduction in the number of license registrations. A number of factors contributed to this decrease. First, fewer persons apparently are entering into the profession in this state. The Board issued approximately 359 new dentistry licenses in 1994 as opposed to 529 new licenses in 1984. Second, the mandatory continuing education requirements, effective for the first time during the last biennial licensing period, caused a number of dentists who maintained active dental licenses to convert to inactive or retired license status which does not require continuing education. Consequently, dentists who opted to maintain inactive or retired license status also paid a lower licensing fee which contributed to the Board's need to increase fees overall. Third, some licensees who are not actively practicing in this State may have

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decided that it no longer served their interests to maintain licensure in New Jersey. Finally, some licensees may have failed to renew because they could not meet the continuing education or other regulatory requirements for licensure. In order to carry out the statutory mandate that Boards assess licensing fees to cover expenses, the increased costs, of necessity, were distributed among fewer licensees which resulted in each licensee paying a slightly larger share than in previous budgets.

It is important to note that the amended fee schedule is not being proposed in order to implement new programs to be provided by the Board. Rather, it is being proposed out of necessity; so that the Board may continue to fulfill its legislative mandate to regulate the practice of dentistry and protect the dental health and welfare of all New Jersey patients. The fee increases merely will permit the Board to provide the same level of services. There is no provision for major new initiatives.

Application fees set forth in N.J.A.C. 13:30-8.1(a) remain the same in all categories. Supplemental fees for dental hygienist expanded duties have been deleted in accordance with the Board's removal of this license category which was adopted by the Board in N.J.A.C. 13:30-2, effective April 3, 1995.

Registration fees in all categories are the subject of proposed increases. N.J.A.C. 13:30-8.1(b) proposes an increase in registration fee for dentists actively working in the profession from $160.00 to $220.00; inactive dentist registration will increase from $70.00 to $100.00; dental branch office registration will increase from $40.00 to $60.00; active dental hygienist registration will increase from $50.00 to $70.00; inactive dental hygienist registration will increase from $20.00 to $30.00; dental hygienist branch office registrations will increase from $20.00 to $30.00; and a registered dental assistant registration will increase from $50.00 to $70.00.

Introduced as a proposed amendment to N.J.A.C. 13:30-8.1(b) is a prorated fee schedule providing that new applicants licensed in the middle of the two year registration period need only pay one half of the registration fee. This proposed amendment will implement the standard practice of most boards in the Division.

Late charges and reinstatement fees, proposed by the Board in N.J.A.C. 13:30-8.1(c) and (d), will affect all dental professionals who submit registrations after the due date. The Board proposes to repeal the $35.00 late fee for both active and inactive registration in favor of a $100.00 late fee and a $200.00 reinstatement fee for a license that has been suspended for failure to renew.

The substantial increase in late charges and reinstatement fees is being proposed for two reasons. First, it is hoped that the prospect of paying a late fee will encourage all registrants to return their biennial renewal in a timely manner. Literally hundreds of licensees failed to renew the 1993-1995 registration on time which resulted in substantial administrative and legal expenses incurred by the Board in connection with legal notices and other administrative attempts to register delinquent licensees. Second, the failure of many licensees to comply with the regulatory obligation to notify the Board of a change of address causes multiple mailings as well as other administrative attempts to locate such licensees. These attempts result in higher administrative costs. Therefore, these increases also are calculated to defray the real expenses incurred by the Board in connection with enforcement measures to obtain current registration by all licensees.

N.J.A.C. 13:30-8.1(d) raises the application fee for a limited teaching certificate from $10.00 to $125.00 and the fee for annual renewal of a limited teaching certificate from $5.00 to $80.00. Although the Board recognizes that this amendment is substantial, the time and effort required to properly review an application for a limited teaching certificate is substantially equivalent to that required for an application for plenary licensure.Therefore, the Board finds that increasing the fees for this type of application and certificate is not only justified but necessary to bring the fees into parity with the fees for other licensees and to reflect the actual cost of their administration.

Social Impact

The proposed amendments should result in a positive social impact on all dentists, dental hygienists and registered dental assistants, as well as all consumers of dental services in New Jersey. This positive impact should result because the fee increases will enable the Board to continue to meet its operating expenses incurred to fulfill its statutory obligation to evaluate applicants for licensure, investigate complaints, initiate appropriate disciplinary and enforcement actions and regulate the practice of dentistry. These Board endeavors provide a positive social impact because they help to protect the health, safety and welfare of New Jersey's citizens by ensuring professional competence and high professional standards.

Economic Impact

The proposed fee schedule will have an economic impact on approximately 15,610 licensed individuals as well as applicants for licensure and 2,855 branch offices. These licensees will be required to pay increased licensing fees. As a result, the impact of higher fees, as an additional cost of doing business, may be reflected in slightly higher consumer fees for dental will be required to pay increased licensing fees. As a result, the impact of higher fees, as an additional cost of doing business, may be reflected in slightly higher consumer fees for dental services. Due to the low cost of licensing fees in proportion to the overall economic benefit that working as a licensed dental professional provides, these fees should not result in a deleterious economic effect to dental practices in New Jersey. Moreover, the positive economic impact engendered by the Board's efforts to maintain public confidence in dental professionals by vigilantly enforcing regulations and, thereby, guarding the public trust, outweighs any negative impact resulting from an increase in biennial licensing fees.

Executive Order No. 27 Statement

An Executive Order No. 27 statement is not required because the rulemaking requirements pertaining to a fee increase are governed by N.J.S.A. 45:1-3.2 and are not subject to any Federal requirements or standards.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., requires the Board to give a description of the types and an estimate of the number of small businesses to which the proposed amendments will apply. The proposed amendments will apply to initial applicants for licensure and to applicants for renewal of licensure in the following areas: dentists, dental hygienists, and registered dental assistants. The proposed amendments will also affect those dental professionals seeking a limited teaching certificate.

Compliance requirements consist of paying the increased registration fee, renewal fee and/or fee for an application for a limited teaching certificate in a timely manner. If fees are not paid in a timely manner, compliance consists of paying the fees as well as late or reinstatement fees. The compliance costs and numbers affected are set out in the Summary. There are no capital costs associated with compliance.

Costs associated with reporting or recordkeeping as a result of these regulatory amendments will be minimal. They represent only costs associated with completing the required forms, writing the required checks and sending them into the Board. Moreover, there are no additional costs of doing business beyond the actual increase in the fees themselves that result from these amendments. Since the initial fees and renewal fees have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act has been implemented.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:30-8.1 Fee schedules

(a) The application fees charged by the Board of Dentistry shall be the following:

1.-2. (No change.)

[3. Dental hygienists—expanded duties supplement ..... $ 25.00]

[4.]**3.** (No change in text.)

(b) The Biennial Registration fees charged by the Board of Dentistry shall be the following:

1. Dentists:

i. Initial registration fee:

(1) If paid during the first year of a biennial renewal period $220.00

(2) If paid during the second year of a biennial renewal period $110.00

[i.]**ii.** Active registration **renewal** ..... [$160.00] **$220.00**

[ii.]**iii.** Inactive registration **renewal** ..... [$ 70.00] **$100.00**

iv. Initial branch office registration, dentist:

1. If paid during the first year of a biennial renewal period ..... $ 60.00

2. If paid during the second year of a biennial renewal period ..... $ 30.00

[iii.]**v.** Branch office **registration renewal, dentist** ..... [$ 40.00] **$ 60.00**

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2. Dental Hygienists:
i. Initial registration fee:
(1) If paid during the first year of a biennial renewal period ..... **$ 70.00**
(2) If paid during the second year of a biennial renewal period ..... **$ 35.00**
[i.]**ii.** Active registration **renewal** ..... [$ 50.00] **$ 70.00**
[ii.]**iii.** Inactive registration **renewal** ..... [$ 20.00] **$ 30.00**
iv. Initial branch office registration, dental hygienists:
1. If paid during the first year of a biennial renewal period ..... **$ 30.00**
2. If paid during the second year of a biennial renewal period ..... **$ 15.00**
[iii.]**v.** Branch office **renewal registration , dental hygienists** ..... [$ 20.00] **$ 30.00**
3. Registered Dental Assistants:
i. Initial registration fee:
(1) If paid during the first year of a biennial renewal period ..... **$ 70.00**
(2) If paid during the second year of a biennial renewal period ..... **$ 35.00**
[i.]**ii.** Active registration **renewal** ..... [$ 50.00] **$ 70.00**
[(c) Registrations submitted after due dates shall have the following late fees assessed:
1. Dentists:
i. Active registration ..... $ 35.00
ii. Inactive registration ..... $ 35.00
2. Dental Hygienists
i. Active registration ..... $ 35.00
ii. Inactive registration ..... $ 35.00
3. Registered Dental Assistants
i. Active registration ..... $ 35.00]
(c) Late fee for dentists, dental hygienists, and registered dental assistants **$100.00**
(d) Reinstatement fee for dentists, dental hygienists and registered dental assistants **$200.00**
[(d)]**(e)** Other fees:
1. Limited teaching certificate
i. Application ..... [$ 10.00] **$125.00**
ii. Annual renewal ..... [$ 5.00] **$ 80.00**
2.-7. (No change.)
[(e)]**(f)** (No change in text.)

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Multi-Year License
Proposed New Rule: N.J.A.C. 13:70-4.23

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1995-371.

Submit written comments by July 19, 1995 to:
Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088 140 East Front Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

A new rule is proposed permitting the Racing Commission to issue a multi-year license. The purpose is to alleviate some of the administrative work in licensing and to make the process more convenient for certain licensees by issuing a longer term license.

Social Impact

The Racing Commission now issues only annual licenses. Many licensees have requested a multi-year license. This proposed rule would have a positive social impact of eliminating the need for an annual license thus making it more convenient for some licensees.

Economic Impact

The new rule will have a minimal positive economic impact to the Commission and licensees by eliminating the need for annual registration and licensing of some categories and the associated costs thereof.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules of racing are dictated by statute, N.J.S.A. 5:5-22, et seq., and by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rule subject of the instant proposed rule does not implicate or exceed established Federal standards. Accordingly, the instant rule shall not have any consequences or implications to Federal requirements or standards.

Regulatory Flexibility Statement

The rule, as proposed, might affect some licensees who may operate as small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but would impose no requirements in excess of those in effect. The impact would be positive since some costs associated with annual licensing will be alleviated.

Full text of the proposed new rule follows:

13:70-4.23 Multi-year license

(a) The Racing Commission may issue a multi-year license which expires on December 31 of the final year. The fee is a multiple of the annual fee and in the Commission's discretion may be offered, on an optional basis, to license categories it deems appropriate.

(b) The Commission may require the multiple year licensee to complete an annual questionnaire updating certain data on the original application, or provide such other supplemental information as it determines appropriate.

(c) A multi-year license may be suspended for violations of this chapter, and the holder thereof shall be subject to such penalties and orders for relief consistent therewith. If a multi-year license is suspended, the holder thereof in the Commission's discretion may forfeit the option to obtain a multi-year license.

(b)

NEW JERSEY RACING COMMISSION

Harness Rules
Multi-Year License
Proposed New Rule: N.J.A.C. 13:71-7.38

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1995-372.

Submit written comments by July 19, 1995 to:
Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088 140 East Front Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

A new rule is proposed permitting the Racing Commission to issue a multi-year license. The purpose is to alleviate some of the administrative work in licensing and to make the process more convenient for certain licensees by issuing a longer term license.

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Social Impact

The Racing Commission now issues only annual licenses. Many licensees have requested a multi-year license. This proposed rule would have a positive social impact of eliminating the need for an annual license thus making it more convenient for some licensees.

Economic Impact

The new rule will have a minimal positive economic impact to the Commission and licensees by eliminating the need for annual registration and licensing of some categories and the associated costs thereof.

Regulatory Flexibility Statement

The rule, as proposed, might affect some licensees who may operate as small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but would impose no requirements in excess of those in effect. The impact would be positive since some costs associated with annual licensing will be alleviated.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules of racing are dictated by statute, N.J.S.A. 5:5-22, et seq., and by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rule subject of the instant proposed amendment does not implicate or exceed established Federal standards. Accordingly, the instant rule shall not have any consequences or implications to Federal requirements or standards.

Full text of the proposed new rule follows:

13:71-7.38 Multi-year license

(a) The Racing Commission may issue a multi-year license which expires on December 31 of the final year. The fee is a multiple of the annual fee and in the Commission's discretion may be offered, on an optional basis, to license categories it deems appropriate.

(b) The Commission may require the multiple year licensee to complete an annual questionnaire updating certain data on the original application, or provide such other supplemental information as it determines appropriate.

(c) A multi-year license may be suspended for violations of this chapter, and the holder thereof shall be subject to such penalties and orders for relief consistent therewith. If a multi-year license is suspended, the holder thereof in the Commission's discretion may forfeit the option to obtain a multi-year license.

(a)

VIOLENT CRIMES COMPENSATION BOARD

Compensable Damages
Moving and Relocation Costs
Proposed Amendment: N.J.A.C. 13:75-1.7

Authorized By: Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.

Authority: N.J.S.A. 52:4B-9.

Proposal Number: PRN 1995-359.

Submit comments by July 19, 1995 to:
Amedeo A. Gaglioti, Esq.
Violent Crimes Compensation Board
60 Park Place
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment at N.J.A.C. 13:75-1.7(m)5 concerning moving and relocation costs will further assist victims who are the subjects of continued violence by particular offenders. Victims of arson and their family members will be further compensated if there is a need to protect their health and safety and prevent further acts of violence directed at the victims and victim's family members.

Social Impact

By permitting victims of arson fire reimbursement for moving and relocation costs the Board hopes to prevent further harm to the victim and their families.

Economic Impact

The proposed amendment will compensate innocent victims in accordance with statutory provisions of N.J.S.A. 52:4B-12 and 52:4B-18(d).

The proposed amendment will allow both increased amounts of compensation and compensation to a greater number of innocent victims.

Executive Order No. 27 Statement

There are no Federal requirements applicable to the subject matter of the proposed amendment.

Regulatory Flexibility Statement

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crimes and their attorneys, may make claims for compensation.

The proposed amendments impose no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:4B-16 et seq., since they establish compensation eligibility criteria for individual victims. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

13:75-1.7 Compensable damages

(a)-(l) (No change.)

(m) The Board shall award compensation for expenses incurred as a result of the relocation of a victim and/or his or her family with the victim due to the incident forming the basis of the victim's claim before the Board where the Board determines there is a need to protect the health and safety of the victim and/or their family and that all other statutory requirements for eligibility are met.

1.-4. (No change.)

5. In the case of an arson fire, compensation may be awarded pursuant to this section, solely where the Board determines that there is a need to protect the health and safety of the victim and victim's family members from further acts of violence perpetrated intentionally and specifically directed at the victim and victim's family by the offender.

(b)

VIOLENT CRIMES COMPENSATION BOARD

Secondary Victim Eligibility
Proposed Amendment: N.J.A.C. 13:75-1.28

Authorized By: Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.

Authority: N.J.S.A. 52:4B-9.

Proposal Number: PRN 1995-358.

Submit comments by July 19, 1995 to:
Amedeo A. Gaglioti, Esq.
Violent Crimes Compensation Board
60 Park Place
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 13:75-1.28(e) is to clarify and codify the practice and procedures of the Board as it relates to secondary victims.

The amendment will further improve benefit potential to innocent victims of crimes and their families. The amendment increases the amount of counseling sessions for secondary victims in death claims.

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Social Impact

By permitting compensation for a greater number of victims and compensation in increased amounts, the Board hopes to more fully ameliorate the problems incurred by innocent victims of crime. No social impact on the Board or society in general is anticipated.

Economic Impact

The proposed amendment will potentially increase compensation to innocent victims for counseling sessions in accordance with statutory provisions of N.J.S.A. 52:4B-12.

The proposed amendment will have no additional economic impact on the Board, but will only clarify its practice and procedure as it relates to secondary victims.

Executive Order No. 27 Statement

There are no Federal requirements applicable to the subject matter of the proposed amendment.

Regulatory Flexibility Statement

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crimes and their attorneys, may make claims for compensation.

The proposed amendment impose no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:4B-16 et seq., since it provides for increased compensation potential. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:75-1.28 Secondary victim eligibility

(a)-(d) (No change.)

(e) Psychotherapy in the case of secondary victims shall not exceed 24 sessions per secondary victim. However, where said secondary victim was physically present at the scene of the crime as a witness or present immediately following its commission, the maximum counseling sessions permitted shall not exceed 30. **In the case of any eligible death claim, the Board may authorize, subject to Board approval, an additional 15 counseling sessions for any secondary victim.** Said sessions shall not include initial evaluation or impartial examinations authorized by the Board. All costs for psychotherapy sessions will be subject to the provisions of N.J.A.C. 13:75-1.27.

(f) (No change.)

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES
DIVISION OF TELECOMMUNICATIONS
Rate Demarcation Point Policy
Proposed New Rules: N.J.A.C. 14:10-8

Authorized By: Board of Public Utilities, Herbert H. Tate, President, Carmen J. Armenti, Commissioner, and Dr. Edward H. Salmon, Commissioner.

Authority: N.J.S.A. 48:2-13.

BPU Docket Number: TT93080315.

Proposal Number: PRN 1995-369.

Submit written comments by mail by July 19, 1995 to:

James A. Nappi, Esq., Secretary
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

The agency proposal follows:

Summary

On August 13, 1993, New Jersey Bell Telephone Company, now known as Bell Atlantic-New Jersey, Inc. (BANJ), filed a petition with the Board to revise the rate demarcation point (RDP) policy to conform to an order of the Federal Communications Commission (FCC). *In the Matter of Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, Report and Order and Further Notice of Proposed Rulemaking,* CC. Docket No. 88-57, June 14, 1990.

As defined in Section 2.1 of BANJ's tariff at second revised page 9.2 (March 9, 1993), the rate demarcation point is the location where the local exchange telecommunications company's (LEC) responsibility for installing and maintaining network services ends and the building/property owner's responsibility begins. The FCC's order was issued to allow building/property owners greater rights and access to premises wiring and to encourage competition among wire installation and maintenance providers. It requires local exchange telecommunications companies to establish the RDP for single tenant installations within 12 inches from the protector, and in the absence of a protector, within 12 inches from where the wire enters the premises. The RDP for multi-tenant premises in existence as of August 13, 1990 shall be determined by the LEC's reasonable and nondiscriminatory standard operating practices provided that when there are multiple RDPs in a multi-tenant premises no RDP shall be more than 12 inches inside the customer's premises.

The RDP for multi-tenant premises in which wiring is installed, modified or rearranged after August 13, 1990 may be established at the minimum point of entry which is defined by the FCC as "the closest practicable point to where the wiring enters a multiunit building or buildings" (47 C.F.R. 68.3). If the LEC fails to establish a reasonable and nondiscriminatory practice of placing the RDP at the Minimum Point of Entry (MPOE), the multi-tenant premises owner has the right to determine if there should be a single RDP for all customers or a separate RDP for each customer. In the event that the LEC elects to allow the building/property owner to determine the location of the RDP, the RDP cannot be further inside the customer's premises than 12 inches.

In the Board's view, customers residing in certain building types could be exposed to liability for repairs or replacement of riser cables which are the property of the building owner in the event of riser cable failure or exhaustion. Additionally, it could be unclear who would own the inside wire and riser cable, or if the LEC could require a building/property owner to accept the transfer of riser cable or inside wire. In order to resolve these issues the Board believes it is appropriate to initiate this rulemaking to establish a Statewide RDP policy and to allow all affected parties an opportunity to comment. Additionally, the proposed rules establish certain safeguards to protect consumers. An explanation of the proposed rules follows:

1. Pursuant to the new rules, all LECs operating in the State will be required to modify their RDP policy within 60 days of the approval of the proposed rules;

2. The rules require LECs to adopt criteria to be used in determining the placement of the RDP for residential, commercial, single tenant and multi-tenant properties;

3. The rules require the LEC to establish the RDP at either the minimum point of entry (MPOE) of the property or MPOE of the building depending upon the property type classification. The establishment of the RDP at a campground, single tenant campus (or one building), marina, military base (or one building), and at mobile home parks serving transient residents shall be at the MPOE of the property. The establishment of the RDP at a single tenant building, multi-tenant building, multi-tenant campus, mall or mobile home park serving permanent residents shall be at the MPOE of the building;

4. The rules will require building/property owners of certain property types to repair or replace, if necessary, wire on their side of the RDP unless otherwise provided for in a separate written agreement between lessor and lessee. The Board believes this to be consistent with the FCC's requirements;

5. Responsibility for the repair or replacement of any portion of inside wire should not affect a maintenance service provider's right to access the Network Interface Device (NID), if present, for the purpose of trouble shooting wire problems or establishing a connection to an enhanced service;

6. The Board will require LECs to file tariff provisions which clearly transfer ownership, and therefore the responsibility of inside wire, to the building/property owner;

7. The rules will also require LECs to make available to building/property owners, or tenants, if applicable, a separate wire maintenance plan that covers riser cable, but does not duplicate existing plans;

8. LECs will be required to make wire repairs in the event a building/property owner is unable to obtain service elsewhere;

9. The rules provide the LEC or any maintenance provider the right of reasonable access to the property for service provisioning in the event wiring requires service;

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10. Further, the LEC will be required to install a NID during the initial maintenance visit in the absence of such a device at no charge;

11. Building/property owners of multi-tenant high rise buildings will receive access to and use of all inside wiring beyond the RDP. In the Board's view, the proposed rules protect customers in two ways. First, the provision requiring LECs to provide maintenance service in the event that a customer is prohibited from obtaining service elsewhere ensures that customers will have access to repair service, and, secondly, the requirement that maintenance service providers are afforded an opportunity to enter the property and are given reasonable access to facilities at locations that contain an RDP will ensure customer choice in maintenance providers;

12. The Board is of the opinion that it is in the interest of all parties to establish a policy that reflects conditions in the State. The Board further believes that the FCC's Order allows flexibility. The requirements to make available wire maintenance plans to tenants and building/property owners guarantees protection and continuation of service in the event of wire problems and is consistent with the FCC's requirements;

13. The proposed rules will transfer ownership of inside wire to the building/property owner. All inside wire will therefore be an asset to the building/property owner, similar to other facilities used to deliver electric and gas service, and could be used for enhanced services such as door answering and alarm systems; and

14. Lastly, the proposed rules address the availability of a network interface device that is necessary in order to allow customers and third party providers to detect wire problems.

Social Impact

The proposed new rules will transfer ownership and, therefore, the use of all inside wiring on the building/property owner's side of the RDP from the LEC to the building/property owner. The LEC will no longer be responsible for inside wire on the building/property owner's side of the RDP. Optional maintenance plans are currently available to LEC customers, and cover the complete diagnosis and repair of problems on the customer's side of the RDP, including inside wire and jacks. The plans provide for the replacement of defective wire pairs provided that spare capacity is available. Such plans do not cover the replacement of riser cable in the event spare wire has been exhausted. The Board believes that the incident rate for riser cable failure is extremely rare and that cable capacity in existing buildings is adequate for the life of most buildings. Additionally, replacement of riser cable necessitated by fire, flood or vandalism would normally be covered by the building owner's insurance policy. However, the rules will require LEC's to make available a separate wire maintenance plan to building/property owners which will cover the replacement of riser cable in the event of failure or exhaustion.

The Board believes that the rules will promote entry into the inside wire maintenance and installation market, thereby increasing customers choices and options. Building/property owners will benefit by gaining access and use of inside wiring, thereby allowing customers to connect other enhanced services to existing inside wire. Some possibilities include door answering and alarm services. The rules do not preclude a building owner from placing limited restrictions on a tenant's right to arrange or rearrange wire inside the premises.

Economic Impact

The proposed new rules will reduce the portion of the network that an LEC is required to maintain. Therefore, the LEC should experience a reduction in maintenance expense associated with wire trouble for the portion of the network that has been consigned to the building/property owner. The LEC may also experience an increase in revenue associated with the sale of additional maintenance contracts or for the billed repair of inside wire that was once the property of the company. Furthermore, the LEC will no longer be required to make investment, at the expense of all consumers, in riser cable for new construction.

It is expected that customers will benefit by the increased competition in the provision, installation and maintenance of inside wiring.

Executive Order No. 27 Statement

An Executive Order No. 27(1994) analysis and certification are not required because the rulemaking requirements of the proposed new rules are consistent with and do not exceed any Federal requirements or standards.

Regulatory Flexibility Analysis

As each employs more than 100 people, LEC's are not small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules do, however, impose compliance requirements on building/property owners whose structures are served by LEC's and LEC customers, some of whom are small businesses. Customers in a single tenant building or campus and on a military base are responsible for repair or replacement of inside wire after the rate demarcation point (RDP). Tenants in multi-tenant buildings or campuses, in malls and in mobile home parks—permanent are responsible for the repair or replacement of inside wire to the extent the problem can be identified as occurring within the customer's premises. Building/property owners in campgrounds, marinas and mobile home parks—transient are responsible for the repair or replacement of inside wire beyond the RDP. Building/property owners in multi-tenant buildings or campuses, in malls and in mobile home parks—permanent are responsible for repair or replacement of inside wire from the RDP up to the first jack of the leased, rented or owned premises.

It is not anticipated that these requirements will increase costs to customers or building/property owners, who should benefit economically under these rules due to the increased competition in the provision, installation and maintenance of inside wiring. If an inside wiring problem arises, the services of an electrician or other appropriate professional may be used, the cost for such service varying with the nature and extent of the wiring problem. Given the need for uniform assignment of responsibility for inside wiring, and the rules' intention to positively impact costs to LEC's, building/property owners and customers, no differentiation in requirements is provided based upon business size.

Full text of the proposed new rules follows:

SUBCHAPTER 8. REGULATION FOR THE RATE DEMARCATION POINT

14:10-8.1 Scope

The rules in this subchapter govern the establishment of the rate demarcation point (RDP) and related matters for telecommunications services which are subject to the jurisdiction of the Board. They are intended to conform with the Federal Communication Commission's (FCC) rules concerning connection of simple inside wiring to the telephone network as set forth in the FCC's order dated June 14, 1990 in CC Docket 88-57. All local exchange telecommunications companies (LEC) authorized to provide service in the State must modify their RDP policy (within 60 days of the effective date of these rules).

14:10-8.2 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context indicates otherwise.

"Board" means the Board of Public Utilities.

"Building/property owner" means the person, persons, organization or appointed agent that is legally responsible for the physical structure or property that is served by the LEC.

"Inside wire" means the wire on the building/property owner's side of the rate demarcation point that is used to carry telecommunications services originating from the public switched network or for any other purpose that does not interfere with the network.

"Customer" means the person who is registered with a LEC as being legally responsible for all charges relating to telecommunications service.

"Local exchange telecommunications company" means a carrier authorized by the Board to provide local telecommunication services.

"Minimum point of entry (MPOE)" means the closest practicable point to where the wire enters the building or crosses a property line.

"Multi-tenant premises" means multi-occupant properties such as apartment buildings, malls, shopping centers, condominiums, campgrounds, marinas, and trailer parks.

"Network interface device (NID)" means a Federal Communications Commission Part 68 registered jack or equivalent device that is located on the building/property owner's side of the protector, if present, and installed and maintained by the LEC. It is where all premise services and facilities are connected to the network.

"Protector" means a part of the LEC's network which is installed and maintained by the LEC for the purpose of grounding and bonding of network wire.

"Rate demarcation point (RDP)" means the location where the LEC's responsibility for installing and maintaining network services ends and the building/property owner's responsibility begins. The RDP may be evidenced by a physical device such as a NID, if present. In the absence of a physical device it is the point not farther than 12 inches inside the premises or property.

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"Riser cable" means, for the purpose of these rules, the portion of inside wire after the RDP in any multi-tenant arrangement.

"Single tenant premises" means a situation where one tenant occupies the entire premises, regardless of the number of buildings.

14:10-8.3 Transfer of ownership

(a) The LEC is required to relinquish ownership of all inside wire on the customer's side of the RDP to the building/property owner.

(b) The transfer of ownership shall be accomplished without compensation to either the LEC or building/property owner and shall be effective upon adoption of this rule.

14:10-8.4 Availability of optional wire maintenance plan

(a) Local exchange telecommunications companies are required to offer a separate wire maintenance plan which shall be made available to tenants and building/property owners who take ownership of wire that had previously belonged to the LEC. The plan must:

1. Cover the repair or replacement, if necessary, of inside wire not covered by another plan and must include riser cable;
2. Not duplicate coverage already offered by the LEC; and
3. Provide for the replacement of riser cable in the event of riser cable exhaustion or failure.

14:10-8.5 Right of access and use

The building/property owner is required to provide reasonable access to the network interface device to maintenance service providers for the purpose of diagnosing service problems or the connection of services.

14:10-8.6 Network interface device

(a) The network interface device (NID) shall be installed and maintained by the LEC.

(b) In the absence of a NID, the customer or building/property owner shall not be charged by the LEC for the initial diagnosis of a problem relating to telephone service. The LEC shall inform the responsible party of the location of the service problem and install, at the LEC's expense, a network interface device which will allow future service trouble to be tested by the building/property owner or third party. After the initial diagnosis of a problem, the building/property owner or the customer, if applicable, may elect to repair the problem themselves, secure the services of a third party or have the LEC perform the work.

(c) The NID shall be placed at the MPOE or closest practicable point to where the wire enters the property or premises and must be in a location that allows ready access. When possible, the NID should be used to establish the rate demarcation point.

14:10-8.7 Rate demarcation point

(a) The rate demarcation point (RDP) for all residential, commercial, single tenant and multi-tenant properties and premises shall conform to the following classifications for the purpose of establishing the RDP. The RDP shall be established at the MPOE of the premises or property as set forth in (b) and (c) below, and shall not be placed more than 12 inches inside the premises or property.

(b) The RDP for facilities in the following building and property types shall be established at the MPOE of the property:

1. Campground;
2. Single tenant campus;
3. Marina;
4. Military base; and
5. Mobile home park—transient.

(c) The RDP for facilities in the following buildings and property types shall be established at the MPOE of the building:

1. Single tenant building;
2. Multi-tenant building;
3. Multi-tenant campus;
4. Mall; and
5. Mobile home park—permanent.

(d) In a situation where a single tenant occupies an entire complex, the LEC may establish the RDP at the closest building to where the wire enters the property.

14:10-8.8 LEC responsibility

(a) The LEC is responsible for the installation and maintenance of network wire up to the RDP.

(b) The LEC is required to provide maintenance service in the event that a customer or building/property owner is unable to reasonably obtain service elsewhere.

14:10-8.9 Building/property owner and customer responsibility

(a) The building/property owner shall be responsible for the repair or replacement of inside wire beyond the RDP in the following arrangements:

1. Campground;
2. Marina; and
3. Mobile home park—transient.

(b) The building/property owner shall be responsible for the repair or replacement of inside wire from the RDP up to the first jack of the leased, rented or owned premises. After this point, the tenant is responsible to the extent that the problem can be identified as occurring inside the customer's premises. The above shall apply to the following arrangements:

1. Multi-tenant building;
2. Multi-tenant campus;
3. Mall; and
4. Mobile homes park—permanent.

(c) The customers of record shall be responsible for the repair or replacement of inside wire after the RDP in the following arrangements:

1. Single tenant building;
2. Single tenant campus; and
3. Military base.

TRANSPORTATION

(a)

NEW JERSEY TRANSIT CORPORATION

Procurement Policies and Procedures
Performance and Payment Bonds
Proposed Amendment: N.J.A.C. 16:72-2.3

Authorized By: New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.

Authority: N.J.S.A. 27:25-5(e), 27:25-11 and 2A:44-143.

Proposal Number: PRN 1995-362.

Submit comments by July 19, 1995 to:
Albert R. Hasbrouck, III
New Jersey Transit Corporation
One Penn Plaza East
Newark, NJ 07105-2246

The agency proposal follows:

Summary

On March 7, 1995, Governor Christine Todd Whitman signed Public Law 95, Chapter 38 into law. Chapter 38 amends N.J.S.A. 2A:44-143 which currently authorizes NJ TRANSIT and other agencies to require performance and payment bonds in an amount less than 100 percent. Formerly, NJ TRANSIT had no choice but to require 100 percent performance and payment bonds. The amendment to N.J.S.A. 2A:44-143 removes the statutory required amount (100 percent) on performance and payment bonds and allows NJ TRANSIT to determine the amount of any required performance and payment bond based upon its assessment of the risk presented to the State by the type of contract and other relevant factors. The amendment also allows NJ TRANSIT to not require a performance or payment bond at all on contracts that do not exceed $200,000. The bond percentages required for each contract shall be identified in the contract bid documents prior to the contract bidding date. Amendments to N.J.A.C. 16:72-2.3(a) and (c) are proposed to conform with these provisions.

Social Impact

The proposed amendment is designed to comply with the recent amendment to N.J.S.A. 2A:44-143. The purpose of the legislation was to allow NJ TRANSIT and other agencies to avoid costly bonding requirements where appropriate and by doing so increase competition by encouraging more businesses to submit bids.

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Economic Impact

NJ TRANSIT presently awards approximately 200 contracts each year totalling approximately $450 million. In procurements when 100 percent performance and payment bonds are necessary, such requirements result in additional costs to NJ TRANSIT. By allowing NJ TRANSIT to tailor the appropriate amount of performance and payment security, certain economies will accrue to NJ TRANSIT, its riders and the taxpayers of New Jersey. In addition, increased competition will result in lower bid prices and further savings.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the requirements of this rulemaking are governed by State statute and not subject to any Federal regulations or standards.

Regulatory Flexibility Analysis

The proposed amendment applies to persons and entities who wish to submit bids on NJ TRANSIT procurements. Some of those entities may be small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No different treatment has been provided for small businesses and the rules provide that all prospective bidders be treated equally in the process. The amount of performance and payment bonds required for a specific procurement will be determined by NJ TRANSIT. It is expected that the reduction of performance and payment bonds will allow more small businesses to bid on NJ TRANSIT procurements.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

16:72-2.3 Performance and payment bonds

(a) In accordance with N.J.S.A. 2A:44-143 [et seq.] **as amended**, a performance bond [equal to] **not to exceed** 100 percent of the contract price shall be required of the successful bidder when a contract for public buildings, or other public works or improvements is awarded to secure fulfillment of the contractor's obligations specified in the contract. **The bond percentage required, based upon NJ TRANSIT's assessment of the risks presented to the State by the type of contract and other relevant factors, shall be identified in the bid documents prior to the contract bidding date. NJ TRANSIT may waive the bond requirement entirely if the contract is for a sum not exceeding $200,000. In determining whether to waive the bond requirement, NJ TRANSIT shall consider the following:**

1. The nature and extent of the work to be performed;

2. The availability of potential bidders to perform the work; and

3. The financial and other capabilities of the potential bidders.

(b) (No change.)

(c) In accordance with N.J.S.A. 2A:44-143 [et seq.] **as amended**, a payment bond [equal to] **not to exceed** 100 percent of the contract price shall be required of the successful bidder when a contract for public buildings, or other public works or improvements is awarded to protect firms or persons supplying labor materials to the contractor/subcontractor for the performance of work provided for in the contract. **The bond percentage required, based upon NJ TRANSIT's assessment of the risks presented to the State by the type of contract and other relevant factors, shall be identified in the bid documents prior to the contract bidding date. NJ TRANSIT may waive the bond requirement entirely if the contract is for a sum not exceeding $200,000. In determining whether to waive the bond requirement, NJ TRANSIT shall consider the following:**

1. The nature and extent of the work to be performed;

2. The availability of potential bidders to perform the work; and

3. The financial and other capabilities of the potential bidders.

(d)-(e) (No change.)

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

General Policies and Procedures

Arbitrary Assessments

Proposed New Rule: N.J.A.C. 18:2-2.12

Authorized By: Richard D. Gardiner, Director, Division of Taxation.

Authority: N.J.S.A. 54:49-5 and 54:50-1.

Proposal Number: PRN 1995-363.

Submit comments by July 19, 1995 to:

Nicholas Catalano
Chief, Tax Services Branch
Division of Taxation
50 Barrack Street
CN-269
Trenton, NJ 08646-0269

The agency proposal follows:

Summary

N.J.S.A. 54:49-5 authorizes the Director, in situations where a taxpayer fails to make any report that may be required by any State tax law, to make an estimate of the tax liability of such taxpayer. This proposed new rule establishes the formulas to be used to make such estimates and will ensure that all areas of the Division are making estimated assessments in the same manner and that all taxpayers are being treated equally.

Social Impact

The proposed new rule will serve to put delinquent taxpayers on notice as to the manner in which tax liabilities will be assessed if they fail to comply with Division requests for returns, reports and/or information.

Economic Impact

It is possible that State tax revenues will be increased as Division personnel utilize the proposed new rule to make estimated assessments on a more frequent basis now that specific guidelines exist for doing so.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the requirements of the rule are dictated by provisions of the New Jersey State Tax Uniform Procedure Law, N.J.S.A. 54:49-5 and 54:50-1, and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

The proposed new rule establishes formulas for making estimated assessments against taxpayers who fail to comply with existing filing and reporting requirements already in place and consequently will not impose any new or additional requirements on any small businesses.

Full text of the proposed new rule follows:

18:2-2.12 Arbitrary assessments

(a) If any taxpayer fails to make any report as required by any State tax law, the Director may make an estimate of the tax liability of such taxpayer from any information he or she may obtain. Once such estimate is made the Director shall assess the taxes, fees, penalties and interest due from such taxpayer, give notice of such assessment, and make demand for payment.

(b) For the purposes of this section the term "report" shall mean any tax return, information statement or report, application, payment, or memorandum required or requested by the Director, whether during audit or otherwise.

(c) If the Director does not have information regarding such taxpayer sufficient to reasonably estimate the taxpayer's liability, the amount of estimated tax liability to be assessed for each period and tax in question shall be the greater of:

1. $1,000; or

2. Two times the estimated underpayment based on the audit items being questioned; or

3. If no information exists for the tax period in question, two times the taxpayer's highest tax liability for a comparable period within the past five years; or

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4. If no information regarding the taxpayer is available, two times the tax liability of a similar taxpayer during a comparable period.

(d) Any amount assessed under this section will be reviewed and redetermined by the Director provided that the taxpayer submits the report or other information requested by the Director within the time allotted, or files a written protest within 90 days in accordance with N.J.S.A. 54:49-18 and N.J.A.C. 18:1-1.8.

(e) If the 90 day protest period authorized by N.J.S.A. 54:49-18 expires without written protest by the taxpayer, any amount assessed under this section shall become a final determination of the Director.

OTHER AGENCIES

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Administrative Rules and Authority Assistance Programs

Proposed Readoption with Amendments: N.J.A.C. 19:30 and N.J.A.C. 19:31

Authorized By: New Jersey Economic Development Authority, Caren S. Franzini, Executive Director/Secretary.

Authority: N.J.S.A. 34:1B-1 et seq.

Proposal Number: PRN 1995-361.

Submit comments by July 19, 1995 to:
Beth E. Sztuk
New Jersey Economic Development Authority
CN 990
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Economic Development Authority was created by an act of the New Jersey Legislature in 1974. The Authority is an independent State agency which operates according to the powers and intent granted by the original enabling law and broadened over the past 20 years as the Legislature identified new needs to enhance economic development. The intent of the legislation was to provide New Jersey with a Statewide, professional and effective economic development financing mechanism at a time of severe recession, high unemployment, economic stagnation and inflation. The Authority was designed to be, and today remains, a financially self-sustaining organization.

To carry out its mandate of stimulating jobs and investments in New Jersey, the Authority pursues public/private partnerships that enable businesses and nonprofit organizations to secure affordable capital for needed improvements and expansion. The Authority's assistance takes the form of bond financing, direct loans, financing guarantees and equity investments. Preference is given to projects which present the most opportunity for economic impact and jobs, will best leverage public dollars to private investment and will benefit those areas of the State most in need of economic assistance.

The rules of the Authority, N.J.A.C. 19:30-1 through 7 and N.J.A.C. 19:31-1 through 9, were adopted and have been amended over time to establish the procedures for and the terms and condition of the financing provided by the Authority. Pursuant to Executive Order No. 66(1978), the Authority's rules are scheduled to expire on July 23, 1995 and August 20, 1995, respectively (except for N.J.A.C. 19:30-7, which is exempt from Executive Order No. 66(1978) as Federally-required). In order to maintain continuity in its statutory obligation to enhance economic development throughout the State, the Authority has reviewed the rules and determined that they should be readopted in their present form, with the exception of the proposed amendments described below.

N.J.A.C. 19:30 Administrative Rules

Subchapter 1, General Provisions, sets forth the mission of the Authority and its specific objectives. Definitions to commonly utilized terms are provided which also apply to the other rules within the chapter. This chapter also sets forth the organization's governing body. As the Legislature sought to expand the Authority's roster of members, the provisions herein will be modified to reflect the current legislative construct, which removed the Commissioners of the Department of Environmental Protection and Community Affairs and increased the public membership from four to six. Lastly, this subchapter details the method by which the public can request information of the Authority and establishes which records maintained by the Authority will not be considered public records pursuant to the Right to Know Law, N.J.S.A. 47:1A-1 et seq. In addition, minor technical amendments are being proposed to clarify or address administrative procedures of the Authority.

Subchapter 2, Disqualification/Debartment/Conflict of Interest, sets forth the basis for which an applicant or contractor and conditions generally that would preclude a company from receiving Authority assistance directly or from the participation of a vendor in an Authority financed project. This subchapter sets forth the procedures for disqualification/debarment and notice requirements.

Subchapter 3, Affirmative Action in Authority Financed Construction Projects, sets forth the guidelines for the application of affirmative action standards and the compliance and monitoring requirements to ensure compliance with the regulations and goals established by the State's Department of Treasury.

Subchapter 4, Payments of Prevailing Wages in Authority Projects, sets forth the requirements for the payment of prevailing wage in construction contracts financed by the Authority.

Subchapter 5, Targeting of Authority Assistance, sets forth the priority consideration for projects in economically distressed localities and the basis upon which municipalities are selected for targeting. Minor technical amendments to N.J.A.C. 19:30-5.1(b) and 5.2(a), are being proposed to clarify or address administrative procedures of the Authority, and to assure consistency with the requirements of the Department of Community Affairs, which is responsible for providing guidance in this subject matter area.

Subchapter 6, Fees, sets forth the fees for the programs administered by the Authority. The Authority is proposing amendments at N.J.A.C. 19:30-6.2 and 6.3 to increase certain fees to afford the Authority the opportunity to recoup some of the direct costs incurred in loan processing and modification requests by the borrower. An extension fee is being proposed for the processing of loan commitments that have expired due to a borrower's failure to execute the commitment letter in compliance with its terms. The Authority is also deleting a fee for the erection of a sign at the project site. Further, this subchapter is being amended to include a provision that allows the Executive Director, with the approval of the Members of the Authority, to waive certain fees upon demonstration by the borrower that the imposition of the fee would impose an undue financial hardship. This provision shall be limited to loans under $25,000. The Authority is also proposing an incentive fee to be charged in those instances where a guarantee is being provided and the applicant is expected to derive a financial benefit as a result of the Authority's participation.

Subchapter 7, Disability Discrimination Complaint Procedure, sets forth the designation of a coordinator whose duties shall include the assurance of the Authority's compliance with the Americans with Disabilities Act (ADA) Amendments are being proposed to address administrative procedures of the Authority, and to add a definition of "disability" which mirrors that used in the ADA.

N.J.A.C. 19:31 Authority Assistance Programs

Subchapter 1, Bond Financing Program, sets forth the eligibility standards and program criteria for the issuance of taxable and tax-exempt bonds, the proceeds of which can be used to provide low interest loans to businesses and certain nonprofit organizations to finance projects which provide or maintain employment and/or tax ratables. N.J.A.C. 19:31-1.4(c) has been amended to recommend that loans of less than $750,000.00 be carefully evaluated as to cost-effectiveness. This is not a requirement, but is a recommendation made to applicants, based on the Authority's experience. Minor technical amendements are being proposed to clarify or address administrative procedures of the program. "Carry forward bond allocation" has been added at N.J.A.C. 19:31-1.7, to provide for its inclusion in the Authority's evaluation of equity.

Subchapter 2, Loan Guarantee Program, sets for the eligibility standards and program criteria for the approval of a guarantee of a portion of the principal amount of a financing for fixed assets or working capital which would increase or maintain employment and/or tax ratables in New Jersey, and which would not be made without the guarantee. Minor technical amendments are being proposed to clarify or address administrative procedures of the program.

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Subchapter 3, Direct Loan Program, sets forth the eligibility standards and program criteria for the approval of direct loans to applicants which are unable to obtain funding from conventional sources even with the assistance of an Authority guarantee. The Authority is proposing to change the interest rate for assistance. In response to program demand and the limited resources available from the Authority, interest rates will be structured within a range. Minor technical amendments are being proposed to clarify or address administrative procedures of the program.

Subchapter 4, Urban Centers Small Loan Program, sets forth the eligibility standards and program criteria for the approval of direct loans to owners and operators of retail and commercial businesses located in downtown urban areas which are unable to obtain funding from conventional sources to upgrade their properties and to remain in such areas. Amendments are being proposed to clarify or address administrative procedures of the program, such as, at N.J.A.C. 19:31-4.1(d), the fixing of the interest rate to one percent below the Federal Discount Rate at the time of closing (with a minimum of four percent and a maximum of ten percent); the deletion of "beneficiary" at N.J.A.C. 19:31-4.5(d)2, since, in reality, the Authority is the collateral assignee only; and the change from "Attorney General" at N.J.A.C. 19:31-4.6 to "Attorney General's Office."

Subchapter 5, Export Revolving Line of Credit, sets forth the eligibility standards and program criteria for the approval of the extension of a revolving line of credit to businesses for the purchase of materials and other production costs for specific, firm contracts used for the production of goods and services for pre and post export. Amendments are being proposed to clarify or address administrative procedures of the program, and to specify at N.J.A.C. 19:31-5.1(d), that interest on advances will be set at the Federal Discount Rate, or five percent, whichever is greater.

Subchapter 6, New Jersey Trade Adjustment Center, sets forth the criteria for assistance to those industries whose market share has declined due to the impact in the market of like or directly competitive imported products. Minor technical amendments are being proposed to clarify or address administrative procedures of the program. Additionally, at N.J.A.C. 19:31-6.3(b), products must now be "like or directly competitive." At N.J.A.C. 19:31-6.4(d), the TAAC may assist in obtaining partial funding. At N.J.A.C. 19:31-6.5(a), the nature of the costs has been specified.

Subchapter 7, Local Development Financing Fund, sets forth the criteria to provide financial assistance to certain commercial and industrial projects in municipalities which qualify for aid pursuant to N.J.S.A. 52:27D-178 (aid to municipalities). Minor technical amendments are being proposed to clarify or address administrative procedures of the program. At N.J.A.C. 19:31-7.5(c), the interest rate has been set at the greater of one half of the Federal Discount Rate or five percent.

Subchapter 8, Hazardous Discharge Site Remediation Fund, establishes the administration of a special revolving fund for the purpose of financing remediation activities at sites where there is a suspicion or actual discharge of hazardous substances or hazardous waste. The eligibility criteria and approval process are also described. Minor technical amendments are being proposed to clarify or address administrative procedures of the program.

Subchapter 9, New Jersey Boat Industry Loan Guarantee Fund, sets forth the eligibility standards and program criteria for the approval of loan guarantees to manufacturers, assemblers and distributors of luxury boats in New Jersey. Minor technical amendments are being proposed to clarify or address administrative procedures of the program.

Social Impact

The New Jersey Legislature has determined that there exists a continuing decline in manufacturing employment within the State which is a contributing factor to its drastic unemployment, which far exceeds the national average, thus adversely affecting New Jersey's economy, its prosperity, safety, health and general welfare of its inhabitants and their standard of living. Under the New Jersey Economic Development Authority Act, the Authority is responsible for the provision of financial assistance as an inducement to new and varied employment promoting enterprises to locate in the State to stimulate economic development and increase the tax base.

Both the proposed readoption of N.J.A.C. 19:30 and 19:31 and the proposed amendments will have a positive social impact by enabling the Authority to continue to provide financial assistance in those instances where the general credit market will not, and further, to stimulate new employment opportunities through the financing of job-creating enterprises. It will also enable the Authority to continue its current role as an urban real estate developer.

Economic Impact

There will be a minor economic impact on the individual borrower of funds from the increase in fees proposed herein. These amounts will be more than offset by the economic advantages obtained by the borrower from the below market rate financing provided by the Authority.

During the past five years the Authority's innovative financing programs have stimulated $5.7 billion in private investment, assisting 1,000 projects to create nearly 23,000 permanent jobs and 49,000 construction jobs. Without the Authority's commitment of personal and financial resources many of these projects would not have proceeded in the State of New Jersey. In reviewing the authority's existing rules, revisions were considered in those instances where statutory or internal administrative changes occurred which rendered the existing rules incorrect. Further consideration was also given to simplifying programmatic requirements to enhance borrower participation. The State's continued commitment to foster business development and job creation relies on programs like those set forth in these rules. The continued existence of the Authority's rules and programs are warranted as they serve the general public, business community and State in insuring fiscal responsibility and integrity in lending public resources.

Executive Order No. 27 Statement

The rules as proposed for readoption and amendment, are not subject to any Federal standards or requirements; therefore, an analysis is not required.

Regulatory Flexibility Analysis

The rules, as proposed for readoption and amendment, will directly impact small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The readoption of the rules will not impose any additional reporting, recordkeeping or compliance requirements. However, it will retain existing reporting, recordkeeping and compliance requirements. These include the monthly remittance of principal and interest payments, annual submission of financial reports, and maintenance of collateral. Such requirements have been imposed and shall continue, as they are necessary to ensure that the financial condition of the borrower remains sound and that the physical aspects of the project remain sound in order to preserve the Authority's collateral. Such reports are usually required by the first position lenders, in any event. The fee increases proposed are necessary and are intended to permit the Authority to recoup a portion of the costs directly attributable to the processing and on-going servicing of the financing assistance provided by the Authority.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at 19:30 and 19:31.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

19:30-1.3 Organization

(a) The governing body of the New Jersey Economic Development Authority, in but not of the Department of Commerce and Economic Development, consists of the Commissioner of Commerce and Economic Development, [the Commissioner of Environmental Protection,] the Commissioner of Labor, [the Commissioner of Community Affairs,] the State Treasurer, and [four] **six** members and three alternate members appointed by the Governor with the advice and consent of the State Senate (collectively referred to as Members). The Authority is chaired by the Commissioner of Commerce and Economic Development **or at the Commissioner's discretion, a chairperson may be appointed from one of the six public members.**

(b) The Authority maintains the following functional divisions to administer its programs:

1. The Division of [Project Development] **Investment Banking** issues tax-exempt bonds:

i.-ii. (No change.)

iii. To benefit certain nonprofit organizations; [and]

iv. To refund eligible projects[.]**; and**

v. To benefit certain local, county and State governmental units or agencies.

2. The Division of [Project Development] **Investment Banking** also issues taxable bonds for projects not eligible for tax-exempt bonds;

3. The Division of [Finance] **Commercial Lending** guarantees loans and makes direct loans for fixed-asset financing and for working capital;

4.-5. (No change.)

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19:30-1.8 Procedure of the Authority

(a) Upon receipt of a petition in compliance with N.J.A.C. 19:30-1.6 **and 1.7**, the Authority shall file a notice of petition with the Office of Administrtive Law for publication in the New Jersey Register, to include:

1.-4. (No change.)

(b)-(c) (No change.)

19:30-2.2 Causes for disqualification/debarment of persons

(a) The Authority may decline to give financial assistance, or approval as a tenant in any Authority-financed project, to any person, or may debar a person from Authority project contracting for any of the following causes:

1.-2. (No change.)

3. Violation of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act; (18 U.S.C. 874[, 40 U.S.C. 276 b, c]);

4. through 11. (No change.)

(b) (No change.)

19:30-3.4 Monitoring by the Authority

(a) The Authority will maintain an [Office of] Affirmative Action **Program**, the staff of which will review contractor performance for compliance with this subchapter. Each contractor will be required to submit to the [Office of] Affirmative Action **Program**, on a weekly basis, certified payroll records identifying the name, address, social security number, race, hourly wage rate, gross earnings of, and number of hours worked in each craft or trade by minority, female, and other workers. The [office of] Affirmative Action **Officer** will make field inspections of project sites, and may perform audits of records relating to construction activities on the project.

(b) The project owner/applicant and the contractor shall identify an officer or employee who will coordinate the Affirmative Action Program and act as liaison with the Authority's [Office of] Affirmative Action **Officer**.

(c) Each project owner/applicant and contractor shall resolve any questions regarding this subchapter with the Authority's [Office of] Affirmative Action **Officer** prior to the execution of any construction contracts in connection with a project receiving Authority assistance.

(d) (No change.)

19:30-3.5 Contract provisions

(a) Every construction contract must require that:

1. Ten percent of each disbursement for the construction of the project will be retained by the project owner/applicant, agent or trustee until the Authority's [Office of] Affirmative Action **Officer** gives written notice that the amount may be released.

2.-7. (No change.)

19:30-5.1 Priority consideration of projects in economically distressed localities

(a) Subject to Federal tax law compliance and certain other legal restraints, [all] **any** project[s] located anywhere in the State of New Jersey may qualify for assistance from the Authority if [they] **it** meets certain economic needs. Nevertheless, the Authority recognizes the special needs of certain municipalities and, accordingly, affords them priority consideration in offering its assistance. Such municipalities are eligible locations for a period of one year or longer.

(b) Qualification under this subchapter is not tantamount to project approval; **it merely identifies certain municipalities for priority consideration**. Projects must [also] meet eligibility standards set forth in N.J.A.C. 19:31.

19:30-5.2 Municipalities eligible for priority consideration

(a) Municipalities meeting either of the following criteria are considered eligible locations:

1. [Eligibility under P.L. 1987, c.439,] **Constituting a "qualifying municipality" as defined in N.J.S.A. 52:27D-178,** which designates certain municipalities as "New Jersey Urban Aid Municipalities" based on a formula including, but not limited to:

[i. Population exceeds 15,000;]

[ii.]**i.** At least one publicly financed dwelling unit for low income families **in municipalities with populations in excess of 15,000**;

[iii.]**ii.** The number of children receiving "Aid to [Families of] Dependent Children" exceeds 250;

[iv.]**iii.** (No change in text.)

[v.]**iv.** The municipality's equalized valuation [of real property] per capita is less than the State equalized valuation per capita.

2. Eligibility under the Authority's formula[, which] requires that **a municipality meet** three of the four following standards [are met]:

i.-iv. (No change.)

(b) (No change.)

19:30-6.2 Commitment fees

(a) A non-refundable commitment fee of [$500.00] **$750.00** is charged with the acceptance by an applicant of a loan guarantee **or direct participation** commitment from the Authority.

(b)-(c) (No change.)

(d) A non-refundable extension fee of $750.00, per extension requested by the borrower, shall be charged for the granting of an extension of the commitment letter beyond the original expiration date.

19:30-6.3 Closing fee

(a) **Except as set forth in (a)1 below**, [For] **for** Authority-issued bonds, the fee to be paid at closing is one-half of one percent of the amount of the bond issue up to and including [$10,000,000] **$15,000,000**; [one-quarter] **three-eighths** of one percent of the amount in excess of **the next** $10,000,000; **and one-half of one percent of the bond amount in excess of $25,000,000**.

1. The fee to be paid at closing for Authority-issued bonds which benefit not-for-profit corporations, as defined by the Internal Revenue Code, shall be one-half of one percent of the amount of the bond issue, up to and including $10,000,000 and one-quarter of one percent of the amount in excess of $10,000,000.

(b)-(c) (No change.)

19:30-6.4 Post-closing fees

(a) The fees in this section are due and payable upon closing of the bond amendment, approval of change of ownership, or signing of modification consent, waiver, [etc.] **or similar documents**.

1.-5. (No change.)

6. For [executing] **review and execution of** a document or **the preparation of documents, or** granting a consent or waiver related to an Authority-assisted project, a fee of [$100.00] **$250.00** shall be charged.

7. For executing (up to [ten] **10** bonds) or authorizing issuance of substitute bonds, a fee of [$25.00] **$100.00** per project, per occurrence shall be charged.

8. For modifying or restructuring payment terms for a **direct** loan or loan guarantee project a fee of [$500.00] **$1,000** shall be charged.

(b) (No change.)

19:30-6.5 Sign [fee] **display**

Applicants requesting financial assistance from the Authority, where part of the project consists of construction or renovation will be [sent] **provided** a sign upon granting of approval by the Members, which is to be **visibly** erected at the project site indicating that the financing was made available through the Authority. [The applicant will be charged $75.00 for the sign which is payable upon receipt of the sign.]

19:30-6.6 Guarantee incentive fees

On a case-by-case basis, where the Authority's financial assistance consists of a loan guarantee, the Authority may charge an annual incentive fee for the term of the guarantee not to exceed, in the aggregate, 50 percent of the original guarantee amount. The annual incentive fee will be predetermined at approval based upon an analysis of the Authority's risk exposure and the financial benefit expected to be derived by the applicant resulting from the Authority's participation.

19:30-6.7 Fee waiver

The Executive Director may, with the approval of the members, waive certain fees as described in this subchapter, upon demonstration by the applicant that the imposition of the fee would impose an undue financial hardship. This provision shall be limited to loans under $25,000.

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19:30-7.1 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such impairment; or being regarded as having such impairment.

. . .

19:30-7.2 Purpose

(a) (No change.)

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the [agency] **Authority** complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the Authority pursuant to N.J.A.C. 19:30-7.

19:30-7.3 Required ADA notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the Authority's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a Disability to receive services or participate in a program or activity provided by the Authority.

AUTHORITY NOTICE OF ADA PROCEDURE

The Authority has adopted an internal [complaint] **grievance** procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act. Title II states, in part, that ["]no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination["] in programs or activities sponsored by a public entity.

Rules describing and governing the internal [complaint] **grievance** procedure can be found in the New Jersey Administrative Code, N.J.A.C. 19:30-7. As those rules indicate, complaints should be addressed to the Authority's designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator
New Jersey Economic Development Authority
[200 South Warren Street]
CN 990
Trenton, New Jersey 08625

1. A complaint may be filed in writing or orally, **by any individual (or that individual's authorized representative) who believes that s/he or a specific class of individuals has been subjected to discrimination on the basis of disability.**[, but] **The complaint** should contain the name and address of the person filing [it] **the complaint and for whom the complaint is being filed,** and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator.

2. A complaint should be filed promptly within 20 days [after the complainant becomes aware of] **from the date of** the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis.)

3.-5. (No change.)

6. The right of a person to a prompt and equitable resolution of the complaint filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA complaint with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this [complaint] **grievance** procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of [interested person,] **complainant** to meet appropriate due process standards and to assure that the [agency] **Authority** complies with the ADA and implementing Federal rules.

19:30-7.4 Designated ADA coordinator

(a)-(b) (No change.)

(c) All complaints alleging that the [agency] **Authority** has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in N.J.A.C. 19:30-7.5.

19:31-1.4 Eligibility standards

(a)-(b) (No change.)

(c) There is no minimum size for borrowings under the program, but loan requests of less than [$500,000] **$750,000** should be carefully reviewed by the applicant to assure that participation in the program is cost effective.

(d)-(e) (No change.)

19:31-1.7 Approval process

(a) (No change.)

(b) The following approvals are required:

1. (No change.)

2. A final bond resolution prepared by bond counsel authorizing bonds to be issued, subject to the following:

i.-ii. (No change.)

iii. Availability under the State volume cap **or carryforward bond allocation** for bond financing in accordance with the IRC; and

3. (No change.)

(c)-(d) (No change.)

19:31-1.9 Post-closing review

The loan agreement executed with the Authority includes certain public purpose covenants and obligations that must be observed by the applicant during the term of the financing. Failure to comply with these covenants and obligations may result in cancellation of the bond **by the Authority.**

19:31-2.5 Approval process

(a)-(c) (No change.)

(d) If there has been no veto, a formal commitment letter is issued to the applicant and the bank which will be providing the loan.

1. (No change.)

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as [beneficiary and] collateral assignee.

3. (No change.)

(e) (No change.)

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the [funds are made available to the applicant] **guarantee is delivered to the lender.**

19:31-2.6 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney [General] **General's Office.**

19:31-3.1 Program description

(a)-(d) (No change.)

(e) Interest on fixed asset and working capital loans is [equal to the lower of the Federal Discount Rate at the time of approval or at the time of the loan closing, with a minimum of five percent] **fixed at a rate no less than five percent or the Federal Discount Rate, whichever is greater, and no more than one percent below the highest Prime Rate as published in the Wall Street Journal, at the time of closing. Factors to be considered when establishing an interest rate may include the project's location—municipality, the industry type, the leveraging of total project cost to public dollars, the employment impact to public dollars, whether the business is new to the State or expanding operations in the State and the increase in the tax ratable value.**

(f) (No change.)

19:31-3.5 Approval process

(a)-(c) (No change.)

(d) If there has been no veto, a formal commitment letter is issued to the applicant.

1. (No change.)

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2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as [beneficiary and] collateral assignee.
3. (No change.)
(e)-(f) (No change.)

19:31-3.6 Attorney General review
All financing documents, including the Application, are subject to review by the Attorney [General] **General's Office**.

SUBCHAPTER 4. URBAN CENTERS SMALL LOAN PROGRAM

19:31-4.1 Program description
(a)-(c) (No change.)
(d) Interest on these loans is equal to [the lower of] one percent below the Federal Discount Rate at the time of [approval or at time of] loan closing, with a minimum of four percent and a maximum of 10 percent.
(e) (No change.)

19:31-4.5 Approval process
(a)-(c) (No change.)
(d) If there has been no veto, a formal commitment letter is issued to the applicant.
1. (No change.)
2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as [beneficiary and] collateral assignee.
3. (No change.)
(e)-(f) (No change.)

19:31-4.6 Attorney General review
All financing documents, including the Application, are subject to review by the Attorney [General] **General's Office**.

19:31-5.1 Program description
(a)-(c) (No change.)
(d) Interest on advances under the line of credit is set at the Federal Discount Rate **or five percent, whichever is greater,** at the time of each borrowing.
(e)-(f) (No change.)

19:31-5.5 Approval process
(a)-(c) (No change.)
(d) If there has been no veto, a formal commitment letter is issued to the applicant.
1. (No change.)
2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as [beneficiary and] collateral assignee.
3. (No change.)
(e)-(f) (No change.)

19:31-5.6 Attorney General review
All financing documents, including the Application, are subject to review by the Attorney [General] **General's Office**.

19:31-6.1 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings:
"Certification" means the process of determination by the USDOC that a company is eligible to apply for [assistance] **Trade Adjustment Assistance** under this program.
"Certified Firm" means a company which has been determined to be eligible to apply for [assistance] **Trade Adjustment Assistance** under this program.
. . .

19:31-6.2 Program description
(a) The Authority operates a TAAC for the State of New Jersey under a cooperative agreement with the [International Trade] **Economic Development** Administration of the USDOC.
(b)-(c) (No change.)
(d) If the plan is approved by USDOC, the TAAC is empowered to provide [project management and partial funding from] **technical assistance partially funded by** USDOC to implement the **types of** assistance **needed**.

19:31-6.3 Eligibility standards
(a) (No change.)
(b) The decline must be due to the competition of **like or directly competitive** imported products, which products must represent an increasing share of the U.S. market.
(c) (No change.)

19:31-6.4 Application and approval process
(a)-(c) (No change.)
(d) If the plan is accepted by the USDOC, the TAAC may assist in obtaining implementation assistance, using business consultants, and in obtaining **partial** funding for the assistance.
(e) (No change.)

19:31-6.5 Cost [of implementation assistance]
(a) The certified firm is required to share in the costs **of developing the business plan and in the implementation of assistance.**
(b) (No change.)

19:31-7.5 Terms of financial assistance
(a) and (b) (No change.)
(c) The interest rate on a loan from the Fund will be the [lower of] one half of the Federal Discount Rate at the time of [approval or at the time of the] loan closing[, with a minimum of] **or** five percent, **whichever is greater.**

19:31-8.4 Terms of financial assistance
(a) (No change.)
(b) Interest on loans from the Fund shall be equal to the [lower of] Federal Discount Rate at the time of approval (see N.J.A.C. 19:31-8.10) or at the time of the loan closing, **whichever is lower,** with a minimum of [or] five percent.
(c) (No change.)

19:31-8.9 Approval process for financial assistance
(a)-(c) (No change.)
(d) If there has been no veto, a formal commitment letter, notice of approval of financial assistance, or grant, is issued to the applicant.
1. The notice of approval will contain all terms, conditions and collateral required by the Authority and will include, among other things, that:
i. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as [beneficiary and] collateral assignee.
ii. (No change.)
(e) and (f) (No change.)
(g) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing shall be scheduled and the funds made available to the applicant **and the sponsor** subject to approval by the [Department] **Authority**.

19:31-8.11 Attorney General review
All financing documents, including the Application, are subject to review by the Attorney [General] **General's Office**.

19:31-8.12-8.13 (No change.)

19:31-9.8 Approval process
(a)-(c) (No change.)
(d) If there has been no veto, a formal commitment letter is issued to the applicant and the bank which will be providing the loan.
1. (No change.)
2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as [beneficiary and] collateral assignee.
3. (No change.)

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(e) (No change.)

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the [funds are made available to the applicant] **guarantee becomes effective**.

19:31-9.9 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney [General] **General's Office.**

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RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules Settlements

Adopted Amendment: N.J.A.C. 1:1-19.1

Proposed: April 3, 1995 at 27 N.J.R. 1343(a).
Adopted: May 15, 1995 by Jeff S. Masin, Acting Director, Office of Administrative Law.
Filed: May 16, 1995 as R.1995 d.300, **without change**.

Authority: N.J.S.A. 52:14F-5(e), (f), and (g).

Effective Date: June 19, 1995.
Expiration Date: April 21, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the contested case hearing procedures are adopted in implementation of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 et seq., and are not subject to any Federal standards or requirements.

Full text of the adoption follows:

1:1-19.1 Settlements

(a) Where the parties to a case wish to settle the matter, and the agency head has not consented to the settlement terms, the judge shall require the parties to disclose the full settlement terms:

1. In writing, by consent order or stipulation signed by all parties or their attorneys; or

2. Orally, by the parties or their representatives.

(b) Under (a) above, if the judge determines from the written order/stipulation or from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, the judge shall issue an initial decision incorporating the full terms and approving the settlement.

(c) If the agency head has approved the terms of the settlement, the parties shall:

1. File with the Clerk and the assigned judge, if known, a stipulation of dismissal, signed by the parties, their attorneys, or their non-lawyer representatives when authorized pursuant to N.J.A.C. 1:1-5.5(f); or

2. If the parties prefer to have the settlement terms incorporated in the record of the case, then the full terms of the settlement shall be disclosed in a consent order signed by the parties, their attorneys, or their non-attorney representatives when authorized pursuant to N.J.A.C. 1:1-5.5(f). The consent order shall be filed with the Clerk and the assigned judge, if known.

(d) The stipulation of dismissal or consent order under (c) above shall be deemed the final decision.

AGRICULTURE

(b)

DIVISION OF DAIRY INDUSTRY

Processors, Dealers and Subdealers

Adopted New Rules: N.J.A.C. 2:52

Proposed: April 3, 1995 at 27 N.J.R. 1343(a).
Adopted: May 25, 1995 by Dhun B. Patel, Ph.D., M.P.H., Acting Director, Division of Dairy Industry, Department of Agriculture.
Filed: May 26, 1995 as R.1995 d.325, **without change**.

Authority: N.J.S.A. 4:12A-1 et seq.

Effective Date: June 19, 1995.
Expiration Date: June 19, 2000.

Summary of Public Comments and Agency Responses:
No comments received. N.J.A.C. 2:52 expired May 1, 1995; pursuant to N.J.A.C. 1:30-4.4(g), the rules proposed for readoption are adopted herein as new rules.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Director, Division of Dairy Industry, New Jersey Department of Agriculture are dictated by the New Jersey Milk Control Act 4:12A-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the adopted new rules can be found in the New Jersey Administrative Code at N.J.A.C. 2:52.

(c)

DIVISION OF REGULATORY SERVICES

New Jersey Commercial Fertilizer Plant Food Nutrient Values

Adopted Amendment: N.J.A.C. 2:69-1.11

Proposed: April 3, 1995 at 27 N.J.R. 1344(a).
Adopted: May 25, 1995 by the State Board of Agriculture, and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: May 26, 1995 as R.1995 d.326, **without change**.

Authority: N.J.S.A. 4:9-15.26.

Effective Date: June 19, 1995.
Expiration Date: December 20, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Director of the Division of Regulatory Services, New Jersey Department of Agriculture are dictated by the New Jersey Commercial Fertilizer and Soil Conditioner Law, 4:9-15.26, and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

2:69-1.11 Commercial values

(a) (No change.)

(b) These values shall be effective from July 1, 1995 through June 30, 1996.

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BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

License Fees

Branch Office Fee for Mortgage Bankers and Brokers

Adopted Amendment: N.J.A.C. 3:38-1.9

Proposed: April 17, 1995 at 27 N.J.R. 1507(a).

Adopted: May 26, 1995 by Elizabeth Randall, Commissioner, Department of Banking.

Filed: May 26, 1995 as R.1995 d.317, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:11B-5.

Effective Date: June 19, 1995.

Expiration Date: September 11, 1997.

Summary of Public Comments and Agency Responses:

The Department received comments from the following persons:

1. Robert M. Jaworski, Esq., Reed Smith Shaw & McClay
2. Mark Mullen, Esq., Wacks, Mullen & Kartzman
3. Jerard F. Maher, Esq., Ribis, Graham & Curtin
4. Kimberle Goldstein, Compliance Officer, Mortgage Access Corporation
5. Albert Engel, Executive Vice President, Mortgage Access Corporation
6. Timothy J. Good, President, Mortgage Access Corporation
7. Kevin Tomlinson, Regional Director, Mortgage Access Corporation
8. Cleason M. Sutter, Regional Director, Mortgage Access Corporation
9. Joseph J. DeMonia, Senior Vice President, Mortgage Access Corporation
10. Robert T. Schaake, Regional Director, Mortgage Access Corporation
11. Kevin Riley, Regional Director, Mortgage Access Corporation

COMMENT: The rule should clarify that the license fee for branch office licenses issued in the second year of a biennial licensing period are one-half of the full license charge.

RESPONSE: The Department agrees that all license fees for licenses issued in the second year of the biennial period are one-half of the full charge. This is consistent with the requirement of N.J.S.A. 17:11B-5, which reduces the maximum branch office fee one-half when it is issued in the second year of the biennial period. The Department has confirmed this change on adoption.

COMMENT: The Department received objection to the increase principally from Mortgage Access, a licensed mortgage banker. The comments stated that the mortgage banking industry has suffered during the past 18 months, and that this was a particularly bad time to increase fees. As evidence of this decline, two of the Regional Directors of Mortgage Access stated that Mortgage Access was forced to close its branch offices in Burlington and Morristown, both urban target areas. By increasing the fees, more branches will close resulting in a further reduction in jobs. In addition, this will adversely affect the consumer by reducing the competition in the mortgage industry.

RESPONSE: Although the Department increased the branch fee from $250.00 to $1,000, it did not increase the fees for corporate licenses or individual licenses as it was statutorily authorized to do. The branch license fee was set at $250.00 by statute in 1981 and had not been increased since. Further, the Department recently amended its rules to allow a licensee to move its branch office anywhere in the State without filing a new branch application. This was previously a major source of these applications.

As stated in the proposal, the increase to $1,000 makes the mortgage banking branch fee comparable to other lenders. For example, the branch fees for both secondary mortgage loan licensees and for consumer loan lenders are $1,000.

The Department recognizes that this is a difficult phase for the mortgage banking industry. However, the Department does not believe that the increase in this fee will be a significant factor in the profitability of a licensee or in its decision to maintain a branch office. Many licensees such as Mortgage Access closed offices for other economic reasons even before this regulation was proposed.

COMMENT: The Department receives from the industry in fees and charges more than $2,000,000 more than it directly spends. Accordingly, it is not necessary to increase fees to meet administrative expenses.

RESPONSE: Although the figures vary from year to year, much of the difference between receipts and expenditures by the Department cover fixed costs such as overhead, fringe benefits such as pension and health benefits and other indirect charges. Further, it should be noted that, although the Department only receives about 25 percent of its revenue from licensees (as opposed to depositories), it spends a considerable amount of time and effort regulating these entities. For example, a disproportionate amount of consumer complaints concern licensees.

COMMENT: The Department in its proposal indicated that there was no differentiation based on business size. This is erroneous, since the number of licensed locations may be related to the size of the lender.

RESPONSE: The Department agrees that there may be some link between the number of branch offices and business size. As a general rule, larger mortgage bankers by volume tend to have more branch offices. However, as exemplified by Mortgage Access, some of the larger mortgage bankers by volume have resisted obtaining many branch offices.

COMMENT: The Department issued renewal applications with the higher charge prior to the effective date of the rule. Should the proposed increase not be adopted, the Department should make refunds to the industry.

RESPONSE: Since the rule is being adopted, refunds will not be necessary.

COMMENT: Licensing is responsible for a variety of functions, one of them being the issuance of Solicitor Registrations. Last year, the Department increased the cost of registering solicitors 100 percent from $25.00 to $50.00, and lenders have yet to derive any useful purpose from these registrations. To accomplish the stated goal, the Department must register solicitors in a timely manner, and this is not being done.

RESPONSE: With the increase in the solicitor fee, the Department also narrowed the definition of solicitor. This has severely reduced the number of solicitors, which should assist the Department in reaching its goal of registering solicitors in a timely fashion.

Executive Order No. 27 Statement

The adopted amendment does not contain any standards or requirements which exceed standards or requirements imposed by Federal law.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions indicated with brackets and asterisks *[thus]*):

3:38-1.9 Office requirements

(a)-(c) (No change.)

(d) Application for branch offices shall include the following:

1. A license fee of $1,000***, provided, however, that if an initial branch office license is issued in the second year of any biennial licensing period, the fee is $500.00***;

2. A general description of the area to be served by the office; and

3. The name and license number of the mortgage banker or broker to be in charge of the office.

(e)-(l) (No change.)

PERSONNEL

(b)

MERIT SYSTEM BOARD

Notice of Administrative Change

Employee Layoff Rights

Exercise of Lateral and Demotional Rights

N.J.A.C. 4A:8-2.2

Take notice that the Department of Personnel has requested, and the Office of Administrative Law has agreed to permit, an administrative change to the text of N.J.A.C. 4A:8-2.2(c)3, in conformance with chapter amendments adopted in the May 15, 1995 New Jersey Register at 27 N.J.R. 1967(b). Paragraph (c)3 concludes with a reference to "seniority in title." As explained in the amendments' proposal Summary (27 N.J.R. 612(a), 614), one of the purposes behind this rulemaking, in particular amendments to N.J.A.C. 4A:8-2.4, was to base seniority on length of continuous permanent service in a jurisdiction rather than length of permanent service in one or more titles. As the reference to "seniority in title" in N.J.A.C. 4A:8-2.2(c)3 was overlooked in the proposal, and is contrary to the Department's clearly expressed intention

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reflected in the proposal Summary and the adopted text of N.J.A.C. 4A:8-2.4, "in title" is being deleted through this notice of administrative change. This notice is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the changed rule follows (deletion indicated in brackets [thus]):

4A:8-2.2 Exercise of lateral and demotional rights

(a)-(b) (No change.)

(c) Following the employee's selection of job location preferences, lateral and demotional title rights shall be provided in the following order:

1.-2. (No change.)

3. A position held by a provisional employee who has permanent status in another title. Where there are multiple provisionals at a job location, the specific position shall be determined based on the level of the permanent title held and seniority [in title];

4.-7. (No change.)

(d)-(g) (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND COMMUNITY RESOURCES

Neighborhood Preservation Balanced Housing Program

Adopted Amendments: N.J.A.C. 5:14-1.4, 3.4, 3.5, 3.6, 3.7 and Appendices B and C

Adopted New Rules: N.J.A.C. 5:14 Appendices D and E

Proposed: April 17, 1995 at 27 N.J.R. 1508(a).

Adopted: May 26, 1995 by Harriet Derman, Commissioner, Department of Community Affairs.

Filed: May 26, 1995 as R.1995 d.339, **without change**.

Authority: N.J.S.A. 52:27D-320.

Effective Date: June 19, 1995.

Expiration Date: November 9, 1995.

Summary of Public Comments and Agency Responses:

The Department received comments from Rick Sauer, Acting Director of the New Jersey Affordable Housing Network, and from Roy Benjamin of JP Affordable Housing.

COMMENT: The New Jersey Affordable Housing Network stated that the overall intent and impact of the new funding proposal appeared to be positive. The Network noted, however, that the cut-off points on the chart are too high. The Network commented that "there are no additional incentives provided to project sponsors to encourage them (or even enable them) to meet the housing needs of households earning below approximately $20,000 per year. . . ." Therefore, the Network recommended that the charts "go somewhat lower, with a commensurate increase in subsidy."

RESPONSE: In developing the current proposal, the Department deliberated at length on the issue of cut-off points for the charts. The issue of serving households with very low incomes must be weighed against the total number of households served. The Department determined that providing higher subsidies than those proposed would substantially reduce production and thus the overall effectiveness of the program.

Additionally, the Department is concerned about the feasibility risks of projects for very low income households. While Balanced Housing funds can be used to reduce or eliminate debt on rental projects, a sufficient level of rents is required to operate the building. The Department maintains that encouraging low rents in the absence of rent subsidies will lead to poor management and ultimately abandonment. The Department's experience with homeownership projects indicates that it is very difficult for low income households to qualify for private mortgages. As a result, houses targeted to very low income households often are sold to moderate income families or remain unsold for long periods.

While the Department does not preclude sponsors from serving lower income households by using other subsidies, the Department contends that it is more productive to serve a greater number of affordable households and to encourage very low income households to seek rental assistance. Therefore, the Department will not reduce the cut-off points of the charts.

COMMENT: JP Affordable Housing is concerned that the proposed rule changes would reduce the amount of funding for two-family homes. They state that "till now, JP's two-family houses were configured by Balanced Housing as two separate entities in which each was determined to have one-half share of the selling price. . . . Under the new rules, the rental unit has no dollar value but is given a larger subsidy. Then, the purchaser's unit is given the full value and a puny subsidy. The unfortunate result is that where historically we were adequately funded now we are not!"

RESPONSE: The proposed amendments address only the amount of subsidy eligibility for homeowner and rental units. Under existing policy, which is not altered by the proposal, the full purchase price of the two-family structure is used for determining the homeowner portion of the subsidy. The method referred to in the comment of using half the sales price for determining homeowner subsidy has not been used in three years. Thus, these rules will increase, rather than decrease, two-family subsidies. The Department intends to propose rules concerning two-family homes in the near future.

Executive Order No. 27 Statement

No Executive Order No. 27 analysis is required because these amendments and rules are not being adopted under the authority of, or in order to implement, comply with or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Full text of the adoption follows:

5:14-1.4 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Urban Aid Municipality" means any municipality eligible for Balanced Housing funding in accordance with N.J.A.C. 5:14-1.2(b)6.

. . .

5:14-3.4 Rental Projects

(a)-(b) (No change.)

(c) The maximum allowable Balanced Housing subsidy for any rental unit receiving a project based Section 8 certificate from the United States Department of Housing and Urban Development or any equivalent project based operating subsidy shall be $15,000. The maximum allowable subsidy for all other rental units shall be determined in accordance with Appendix B to this chapter, incorporated herein by reference, if the project is located in an urban aid municipality and in accordance with Appendix C of this chapter, incorporated herein by reference, if the project is located in a nonurban aid municipality.

(d)-(e) (No change.)

5:14-3.5 Purchase/Rental Projects

(a)-(b) (No change.)

(c) The maximum allowable Balanced Housing subsidy for any purchase/rental unit receiving a project based Section 8 certificate from the United States Department of Housing and Urban Development or any equivalent project based operating subsidy shall be $15,000. The maximum allowable subsidy for all other purchase/rental units shall be determined in accordance with Appendix B to this chapter, incorporated herein by reference, if the project is located in an urban aid municipality and in accordance with Appendix C of this chapter, incorporated herein by reference, if the project is located in a nonurban aid municipality.

5:14-3.6 Single Room Occupancy Projects

(a)-(b) (No change.)

(c) The maximum allowable Balanced Housing subsidy for any single room occupancy unit receiving a project based Section 8 certificate from the United States Department of Housing and Urban Development or any equivalent project based operating subsidy shall be $15,000. The maximum allowable subsidy for all other single room occupancy units

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shall be determined in accordance with Appendix B to this chapter, incorporated herein by reference, if the project is located in an urban aid municipality and in accordance with Appendix C of this chapter, incorporated herein by reference, if the project is located in a nonurban aid municipality.

(d) (No change.)

5:14-3.7 Homeownership Projects

(a)-(d) (No change.)

(e) The maximum subsidy for homeownership projects shall be determined in accordance with Appendix D to this chapter, incorporated herein by reference if the project is located in an urban aid municipality or in accordance with Appendix E, incorporated herein by reference, if the project is not located in an urban aid municipality.

(f)-(g) (No change.)

APPENDIX B

Urban Aid Municipalities—Maximum Subsidy
Rental Units

Rent*	Studio/ SRO	1BR	2BR	3BR	4BR
1,500 or more	1,000	1,000	1,000	1,000	1,000
1,025	1,000	1,000	1,000	1,000	3,000
1,000	1,000	1,000	1,000	1,000	5,500
975	1,000	1,000	1,000	2,000	8,000
950	1,000	1,000	1,000	4,500	10,500
925	1,000	1,000	1,000	7,000	13,000
900	1,000	1,000	3,500	9,500	15,500
875	1,000	1,000	6,000	12,000	18,000
850	1,000	2,500	8,500	14,500	20,500
825	1,000	5,000	11,000	17,000	23,000
800	1,000	7,500	13,500	19,500	25,500
775	1,000	10,000	16,000	22,000	28,000
750	1,000	12,500	18,500	24,500	30,500
725	1,000	15,000	21,000	27,000	33,000
700	2,500	17,500	23,500	29,500	35,500
675	5,000	20,000	26,000	32,000	38,000
650	7,500	22,500	28,500	34,500	40,500
625	10,000	25,000	31,900	37,000	43,000
600	12,500	27,500	33,500	39,500	45,500
575	15,000	30,000	36,000	42,000	48,000
550	17,500	32,500	38,500	44,500	50,500
525	20,000	35,000	41,000	47,000	53,000
500 or less	20,000	35,000	41,000	49,500	55,500

ADJUSTMENTS:

1. Unit Size:

The Balanced Housing funding charts are based on certain assumptions regarding unit size. These assumptions are:

Studio	500 Sq. Ft.
1 Bedroom	600 Sq. Ft.
2 Bedrooms	750 Sq. Ft.
3 Bedrooms	950 Sq. Ft.
4 Bedrooms	1,150 Sq. Ft.

For units that are smaller than the sizes listed above, subtract $50.00 for each square foot below the size indicated:

In determining unit size, the Department will consider the net square foot size, that is the area inside the unit. Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches. See N.J.A.C. 5:14-2.2(c) for waiver provisions.

*Rent includes tenant paid utilities. For rents in between those listed, interpolate.

APPENDIX C

Nonurban Aid Municipalities—Maximum Subsidy
Rental Units

Rent*	Studio/ SRO	1BR	2BR	3BR	4BR
$975 or more	1,000	1,000	1,000	1,000	1,000
950	1,000	1,000	1,000	1,000	2,500
925	1,000	1,000	1,000	1,000	5,000
900	1,000	1,000	1,000	2,500	7,500
875	1,000	1,000	1,000	5,000	10,000
850	1,000	1,000	2,500	7,500	12,500
825	1,000	1,000	5,000	10,000	15,000
800	1,000	2,500	7,500	12,500	17,500
775	1,000	5,000	10,000	15,000	20,000
750	1,000	7,500	12,500	17,500	22,500
725	1,000	10,000	15,000	20,000	25,000
700	1,000	12,500	17,500	22,500	27,500
675	1,000	15,000	20,000	25,000	30,000
650	2,500	17,500	22,500	27,500	32,500
625	7,500	20,000	25,000	30,000	35,000
600	10,000	22,500	27,500	32,500	37,500
575	12,500	25,000	30,000	35,000	40,000
550	15,000	27,500	32,500	37,500	42,500
525	17,500	30,000	35,000	40,000	45,000
500 or less	17,500	30,000	35,000	42,500	47,500

ADJUSTMENTS:

1. Unit Size:

The Balanced Housing funding charts are based on certain assumptions regarding unit size. These assumptions are:

Studio	500 Sq. Ft.
1 Bedroom	600 Sq. Ft.
2 Bedrooms	750 Sq. Ft.
3 Bedrooms	950 Sq. Ft.
4 Bedrooms	1,150 Sq. Ft.

For units that are smaller than the sizes listed above, subtract $50.00 for each square foot below the size indicated:

In determining unit size, the Department will consider the net square foot size, that is the area inside the unit. Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches. See N.J.A.C. 5:14-2.2(c) for waiver provisions.

*Rent includes tenant paid utilities. For rents in between those listed, interpolate.

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APPENDIX D

Urban Aid Municipalities—Maximum Subsidy
Homeownership Units

Sales Price*	1BR	2BR	3BR	4BR
97,000 and up	1,000	1,000	1,000	1,000
95,000	1,000	1,000	1,000	3,000
92,500	1,000	1,000	1,000	5,500
90,000	1,000	1,000	2,000	8,000
87,500	1,000	1,000	4,500	10,500
85,000	1,000	1,000	7,000	13,000
82,500	1,000	3,500	9,500	15,500
80,000	1,000	6,000	12,000	18,000
77,500	2,500	8,500	14,500	20,500
75,000	5,000	11,000	17,000	23,000
72,500	7,500	13,500	19,500	25,500
70,000	10,000	16,000	22,000	28,000
67,500	12,500	18,500	24,500	30,500
65,000	15,000	21,000	27,000	33,000
62,500	17,500	23,500	29,500	35,500
60,000	20,000	26,000	32,000	38,000
57,500	22,500	28,500	34,500	40,500
55,000	25,000	31,000	37,000	43,000
52,500	27,500	33,500	39,500	45,500
50,000 or less	30,000	36,000	42,000	48,000

ADJUSTMENTS:

1. Unit Size:

The Balanced Housing funding charts are based on certain assumptions regarding unit size. These assumptions are:

Studio	500 Sq. Ft.
1 Bedroom	600 Sq. Ft.
2 Bedrooms	750 Sq. Ft.
3 Bedrooms	950 Sq. Ft.
4 Bedrooms	1,150 Sq. Ft.

For units that are smaller than the sizes listed above, substract $50.00 for each square foot below the size indicated:

In determining unit size, the Department will consider the net square foot size, that is the area inside the unit. Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches. See N.J.A.C. 5:14-2.2(c) for waiver provisions.

*For prices in between those listed, interpolate.

APPENDIX E

Nonurban Aid Municipalities—Maximum Subsidy

Homeownership Units

Sales Price*	1BR	2BR	3BR	4BR
$90,000 and up	1,000	1,000	1,000	1,000
87,000	1,000	1,000	1,000	2,500
85,000	1,000	1,000	1,000	5,000
82,500	1,000	1,000	2,500	7,500
80,000	1,000	1,000	5,000	10,000
77,500	1,000	2,500	7,500	12,500
75,000	1,000	5,000	10,000	15,000
72,500	2,500	7,500	12,500	17,500
70,000	5,000	10,000	15,000	20,000
67,500	7,500	12,500	17,500	22,500
65,000	10,000	15,000	20,000	25,000
62,500	12,500	17,500	22,500	27,500
60,000	15,000	20,000	25,000	30,000
57,500	17,500	22,500	27,500	32,500
55,000	20,000	25,000	30,000	35,000
52,500	22,500	27,500	32,500	37,500
50,000 or less	25,000	30,000	35,000	40,000

ADJUSTMENTS:

1. Unit Size:

The Balanced Housing funding charts are based on certain assumptions regarding unit size. These assumptions are:

Studio	500 Sq. Ft.
1 Bedroom	600 Sq. Ft.
2 Bedrooms	750 Sq. Ft.
3 Bedrooms	950 Sq. Ft.
4 Bedrooms	1,150 Sq. Ft.

For units that are smaller than the sizes listed above, subtract $50.00 for each square foot below the size indicated:

In determining unit size, the Department will consider the net square foot size, that is the area inside the unit. Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches. See N.J.A.C. 5:14-2.2(c) for waiver provisions.

*For prices in between those listed, interpolate.

APPENDIX F

(No change in text.)

(a)

DIVISION OF CODES AND STANDARDS

Notice of Administrative Change
Uniform Fire Code
Smoke Detectors for One and Two-Family Dwellings
N.J.A.C. 5:18-4.19

Take notice that the Department of Community Affairs has requested, and the Office of Administrative Law has agreed to permit, an administrative change to N.J.A.C. 5:18-4.19(a), revising the reference therein to N.J.A.C. 5:18-2.20 to N.J.A.C. 5:18-2.3. This change is appropriate and necessary due to the recodification of N.J.A.C. 5:18-2.20 to N.J.A.C. 5:18-2.3, effective March 6, 1995 (see 27 N.J.R. 878(b)). This notice of administrative change is published in accordance with N.J.A.C. 1:30-2.7.

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Full text of the changed rule follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

5:18-4.19 Smoke detectors for one and two-family dwellings

(a) In all Use Group R-3 dwellings subject to the requirements of N.J.A.C. 5:18-[2.20]**2.3**, smoke detectors shall be installed as follows:

1.-2. (No change.)

(b)-(c) (No change.)

(a)

DIVISION OF CODES AND STANDARDS

Uniform Construction Code Interpretation and Opinions

Adopted Amendment: N.J.A.C. 5:23-3.9

Proposed: April 17, 1995 at 27 N.J.R. 1512(a).

Adopted: May 26, 1995 by Harriet Derman, Commissioner, Department of Community Affairs.

Filed: May 26, 1995 as R.1995 d.340, **with a substantive change** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-124.

Effective Date: June 19, 1995.

Expiration Date: February 3, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Agency-Initiated Change:

In the course of review of this proposal within the agency, it was realized that the proposed amendment would confer approval power upon the Code Advisory Board, which is established by N.J.S.A. 52:27D-125 in order to "assist and advise the commissioner." Since requiring the consent, rather than just the advice, of the Code Advisory Board would contravene the statutory limitation placed upon the Board's role, the proposed amendment is being changed on adoption to require consultation with the Board, rather than approval by it, before a bulletin is issued. The Board supports this change.

Executive Order No. 27(1994) Statement

An Executive Order No. 27(1994) analysis is not required because these rules are not being readopted under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

5:23-3.9 Interpretations and opinions

(a)-(b) (No change.)

(c) The Construction Code Element may issue bulletins to provide advice to code enforcing agencies, builders, and designers. Bulletins may be issued when the Element finds that an issue that is in need of clarification is adequately dealt with by existing rules and that rulemaking is therefore not appropriate or necessary. *[Approval by]* ***Consultation with*** the Code Advisory Board shall be required prior to the issuance of any bulletin.

(d) (No change in text.)

(b)

OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY

Ombudsman Practice and Procedure

Readoption with Amendments: N.J.A.C. 5:100

Proposed: April 3, 1995 at 27 N.J.R. 1348(a).

Adopted: May 25, 1995 by Bonnie Kelly, Acting Ombudsman for the Institutionalized Elderly.

Filed: May 26, 1995 as R.1995 d.336, **without change.**

Authority: N.J.S.A. 52:27G-1 et seq., specifically 52:27G-5 and 5.1.

Effective Date: May 26, 1995, Readoption.
June 19, 1995, Amendments.

Expiration Date: May 26, 2000.

Summary of Public Comments and Agency Responses:

The Office of the Ombudsman for the Institutionalized Elderly (Office) received comments on its proposed readoption from the following:

American Association of Retired Persons
Citizens' Committee Coalition on Biomedical Ethics
Medical Society of New Jersey
New Jersey Association of Non-Profit Homes for the Aging
New Jersey Department of Health

The Office wishes to thank all of the commenters for their input. Even though the Office has decided to adopt the proposed readoption without incorporating any of the suggestions, the Office will not ignore the commenters' input.

A summary of the comments received and the Office's responses to those comments are provided below:

COMMENT: Several commenters recommended that the Office define and recognize the role of Ethics Committees in the process of "dispute resolution" in the provision of technical assistance.

RESPONSE: The Office has always advocated and supported the establishment and use of Ethics Committees both in long-term and acute care settings. The definition and role of Ethics Committees have been addressed in the Living Will Legislation, and any such inclusion at this time goes beyond the scope of these rules. Nevertheless, the Office supports the establishment of such committees, and will address this issue at a later date.

COMMENT: Several commenters requested that the Office remove the requirement that two non-attending physicians determine a resident's capacity to make health care decisions.

RESPONSE: The Office respectfully denies this request. This requirement is specifically included to comply with the Appellate Court's decision in *Gleason v. Abrams*, Dkt. No. A-6361-8973, July 31, 1991.

COMMENT: Some commenters suggested that N.J.A.C. 5:100-2.3(a) be revised to clarify the intent of the provision.

RESPONSE: The Office believes the provision of this subsection is sufficiently clear. The subsection reiterates the New Jersey Supreme Court's decision *in Matter of Conroy*, 98 *N.J.* 321 (1985).

COMMENT: Two commenters questioned why the definition of "hospital" was changed to "acute care medical center."

RESPONSE: Since many individuals who contact the Office are frequently confused about the extent of the Office's jurisdiction, the proposed amendment to the definition of "Facility" was made in an attempt to clarify this issue, that is, to make it clear that the Office has no jurisdiction over acute care facilities, only over long term care facilities. The Office is willing to consider this change as a proposed amendment at a later date.

COMMENT: One commenter suggested that the Office revise the definition of "facility" to eliminate the terms "skilled nursing home," "intermediate care facility," "extended care facility," and "convalescent home" and replace these terms with "long term care facility" and "assisted living facility."

RESPONSE: The Office acknowledges and appreciates this comment; however, the present definitions are still part of the statute. To avoid misunderstanding about the extent of the Office's jurisdiction, the Office will retain the present definitions but propose to make changes at a later date.

COMMENT: One commenter suggested that the Office change the definition of "Volunteer Advocate," and eliminate the words "problem solving, eliciting complaints." and add instead "under the supervision of the Ombudsman."

RESPONSE: The Office sees no need to do so. Under the existing regulations, the Volunteer Advocates will be operating under the direct

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supervision of the Office, and possess no more authority than is conferred by the Office.

COMMENT: One commenter suggested adding the number of training hours for the volunteers to the rules.

RESPONSE: The Office is unable to adopt this suggestion. The Volunteer Program is still in the pilot stages of its development, and it would be premature to include a specific length of time for training these volunteers. The Office must maintain some flexibility in establishing the requirements for this program.

COMMENT: One commenter suggested that the word "Ombudsman" be added to insure that the Volunteer Advocate Program's philosophy is the same as the Ombudsman's.

RESPONSE: The Office sees no need for this addition. The Volunteer Advocate Program is a part of the Ombudsman's program, and will be supervised and directed in accordance with the Office's rules and philosophy.

COMMENT: One commenter requested that the Volunteer Advocates be required to report to a "designated facility representative," so the facility can assist the Volunteer Advocates in resolving concerns.

RESPONSE: The Office disagrees. The Volunteer Advocates are viewed as official representatives of the Office. As such, they are required to maintain the same confidentiality with respect to information received from residents as is required under the Office's enabling statute. Any requirement that they report to a facility representative can compromise this confidentiality provision.

COMMENT: One commenter suggested that the Office set a time frame of "30 days where possible" after the completion of an investigation to respond to a complaint.

RESPONSE: The Office does not believe this inclusion is necessary. Upon completion of an investigation the Office immediately responds to complainants or institutes other action.

COMMENT: One commenter suggested that the Office discontinue reporting abuse and exploitation to the Commissioner of Human Services.

RESPONSE: The Office respectfully denies this request since it is required, under its enabling law, to report abuses and exploitation to the Commissioner of Human Services.

COMMENT: One commenter suggested that the Office include a provision for reporting substantiated complaints of abuse, neglect and appropriation of a resident's property to the Nurse Aide Registry within the Department of Health.

RESPONSE: The Office believes that this is already addressed under N.J.A.C. 5:100-1.5(d)5.

Executive Order No. 27 Statement

The proposed readoption and amendments do not exceed analogous Federal requirements, since there are no existing statutes or requirements governing the Ombudsman program. The amendments to the Older Americans Act of 1965 required that states maintain a long-term care Ombudsman program to intervene in and resolve a range of problems faced by long-term care facilities.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:100.

Full text of the adopted amendments follows:

5:100-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

. . .

"Facility" means any facility or institution, whether public or private, offering health or health-related services for the institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision by any government agency. Facilities include, but are not limited to, nursing homes, skilled nursing homes, intermediate care facilities, extended care facilities, convalescent homes, rehabilitation centers, residential healthcare facilities, class "C" and "D" boarding homes, special hospitals, veterans' hospitals, chronic disease hospitals, psychiatric hospitals, mental hospitals, mental retardation centers or facilities, day care facilities for the elderly, and medical day care centers. "Facility" shall not mean an acute care medical center.

. . .

"Regional Volunteer Coordinator" means an individual trained and qualified to administer and supervise the Volunteer Advocate Program, and who is capable and willing to promote the Program's philosophy throughout the community being served.

. . .

"Volunteer Advocate" means an individual trained and certified by the Office to make regular weekly visits to assigned long-term care facilities. A Volunteer Advocate may exercise, but need not be limited to, such functions as visitation, consultation, problem solving, eliciting complaints and generally serving as an advocate on behalf of the institutionalized elderly.

5:100-1.3 Contact with the Office; information about rights and entitlements; communications

(a) (No change.)

(b) The Office may be contacted by calling its toll-free telephone number (800-792-8820), 24 hours per day, any day of the year; or by writing to: The Office of the Ombudsman for the Institutionalized Elderly, Department of Community Affairs, CN 808, Trenton, New Jersey 08625-0808.

(c)-(g) (No change.)

5:100-1.9 Volunteer Advocate Program

(a) The Office shall develop programs for use, training and coordination of volunteers and shall also be responsible for the development of policies and procedures for the administration of the Volunteer Advocate Program. These Volunteer Advocates shall serve to promote the well-being and quality of life of residents of long-term care facilities. They shall be required to report to the Regional Volunteer Coordinator.

(b) The Office shall retain responsibility for its volunteer advocates by acquiring the services of a Regional Volunteer Coordinator who shall be responsible to the Ombudsman. The Regional Volunteer Coordinator shall recruit, train and supervise Volunteer Advocates to advocate on behalf of the institutionalized elderly 60 years of age and over.

(c) The Ombudsman shall coordinate the efforts of the Office concerning volunteers with all relevant government agencies and with the administrators of such private facilities as may be deemed appropriate to ensure coordination and to avoid duplication of effort, so that the Volunteer Program will genuinely serve the interests of the institutionalized elderly without disrupting the legitimate function of any facility.

5:100-2.1 Purpose

(a) (No change.)

(b) Where there is no clear "duty to report" as outlined in N.J.A.C. 5:100-2.3, the Office is available to provide technical support, assistance and dispute resolution, should there be disagreement regarding the withholding or withdrawal of life-sustaining treatment, whether or not the resident has the capacity to make a healthcare decision, and whether or not an Advance Directive ("Living Will") or Proxy Directive ("Durable Power of Attorney for Health Care") is involved. The Office's function in any such situation is to promote, advocate and ensure the rights of the institutionalized elderly resident, pursuant to New Jersey Supreme Court guidelines and the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 et seq.

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF ENFORCEMENT COORDINATION

Notice of Administrative Corrections
Flood Hazard Area Control
General Environmental Standards
Projects Affecting Other Fish Resources
N.J.A.C. 7:13-3.6

Take notice that the Office of Administrative Law has discovered errors in the text of changes upon adoption made to N.J.A.C. 7:13-3.6(c)2, as published in the March 20, 1995 New Jersey Register at 27 N.J.R. 1211(a). This paragraph contains a double negative ("No exception to (c)1 above shall not be allowed by any delegated agency, . . .") and an incomplete cross-reference

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("to ( )1 above"). To correct these errors, "not" is being deleted and the reference completed as "(c)1 above." A comparison of this corrected paragraph to N.J.A.C. 7:13-3.5(j)3 as adopted is in keeping with the statement in the notice of adoption's Summary of Agency-Initiated Changes (27 N.J.R. 1244) that N.J.A.C. 7:13-3.6(c) and N.J.A.C. 7:13-3.5(j) were intended to be substantively identical. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

7:13-3.6 Projects affecting other fish resources

(a)-(b) (No change.)

(c) Channel modifications at bridges and culverts (including their upstream and downstream transition zones), channelization projects, watercourse cleaning projects, and other channel modifications (excluding dams) shall comply with the following fish passage requirements:

1. (No change.)

2. No exception to (c)1 above shall [not] be allowed by any delegated agency. The Department will allow an exception to (c)1 above if:

i.-iii. (No change.)

(d)-(f) (No change.)

(a)

ENVIRONMENTAL REGULATION

Notice of Waiver of Executive Order No. 66(1978) New Jersey Pollutant Discharge Elimination System N.J.A.C. 7:14A

Take notice that Governor Christine Todd Whitman has been informed by the Department of Environmental Protection (Department) that the New Jersey Pollutant Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A, are due to expire June 2, 1995, pursuant to Executive Order No. 66(1978). These rules implement the NJPDES permitting requirements of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

The Department originally adopted the NJPDES rules on March 6, 1981 in order to assume delegation of the Federal permitting system pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., and has adopted numerous amendments since then. However, the Department has identified many ways in which the current system may be improved to be more efficient, understandable and responsive, and is in the process of substantially restructuring the NJPDES permitting program. On February 1, 1993, the Department issued a Notice of Opportunity for Interested Party Review in the New Jersey Register in order to solicit comments on various options to restructure the NJPDES system (See 25 N.J.R. 411(a)). On October 3, 1994, the Department made available a comprehensive Summary of the anticipated changes in the revised NJPDES rules. (See 26 N.J.R. 3927(a)).

The major component of the proposed restructuring of the NJPDES program is the proposed use of a watershed approach to permitting. The Department held two public Round Tables after the release of each of the above two documents and received extensive oral and written comments. Based on this process, the Department has written a draft proposal document which upon adoption will repeal the existing NJPDES chapter at N.J.A.C. 7:14A and replace it with an entirely new chapter.

Due to the scope of the changes being proposed and the extent of the public comments that are anticipated, the Department will be unable to adopt the new chapter prior to the June 2, 1995 expiration of N.J.A.C. 7:14A. The proposal is currently scheduled for issuance in Summer 1995 with an anticipated adoption before June 1996. Given this ongoing process for the extensive overhaul of the existing chapter, Governor Christine Todd Whitman has determined that the Department has met the spirit and intent of Executive Order No. 66(1978) by ensuring that the NJPDES rules remain necessary, adequate, and responsive for the purpose for which they were promulgated.

Therefore, by the authority vested in her by Executive Order No. 66(1978), Governor Christine Todd Whitman on May 19, 1995, directed that the five year sunset provision of Executive Order No. 66(1978) be waived for N.J.A.C. 7:14A, and the expiration date for the existing rules be extended from June 2, 1995 to June 2, 1996.

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries
Notice of Administrative Change
Modification of Commercial Winter Flounder Season N.J.A.C. 7:25-18.14

Take notice that, pursuant to N.J.A.C. 7:25-18.14(n), the Commissioner of the Department of Environmental Protection, with the approval of the New Jersey Marine Fisheries Council, has modified the open commercial season for winter flounder from February 15 through May 31 to be open from December 1 through May 31. This change also clarifies that the open season refers to the period of time in which fishing may occur in New Jersey waters and in which landing of fish harvested from New Jersey waters is permitted. This action has been taken to maintain New Jersey's compliance with the Atlantic States Marine Fisheries Commission (ASMFC) management plan for winter flounder. The chairman of the ASMFC Winter Flounder Management Board recently contacted the Division to clarify that the intent of the ASMFC winter flounder management plan was to address conservation of the individual states' spawning stocks. Consequently, New Jersey's management obligation under the ASMFC Winter Flounder Plan is limited to winter flounder taken from New Jersey waters. The above modifications reflect this management obligation.

This change will be reflected in the Division of Fish, Game & Wildlife rules at N.J.A.C. 7:25-18.14(k) as indicated below. As required at N.J.A.C. 7:25-18.14(n), notice of this modification to the open commercial winter flounder season has been published in the Division of Fish, Game and Wildlife's commercial regulation publication. A copy of the notice appearing in the New Jersey Register will also be mailed to commercial fishing docks in New Jersey.

Full text of the changed rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

7:25-18.14 Otter and beam trawls

(a)-(j) (No change.)

(k) Special provisions applicable to a directed winter flounder fishery are as follows:

1.-3. (No change.)

4. No person shall **fish for or** land any winter flounder taken by otter trawl or by any other net, trap, dredge or commercial gear **in New Jersey waters**, except during the open season of [February] **December** 1 through May 31 or as modified by the Commissioner pursuant to (n) below. No dealer shall accept any winter flounder [landed] **taken** in New Jersey **waters** except during such open season or as modified by the Commissioner pursuant to (n) below. The harvest of winter flounder by the use of fyke nets is subject to the provisions of N.J.A.C. 7:25-18.5(g)2.

(l)-(n) (No change.)

(c)

ENFORCEMENT

Noise Control
Readoption with Amendments: N.J.A.C. 7:29

Proposed: March 20, 1995 at 27 N.J.R. 1091(a).

Adopted: May 19, 1995 by Robert C. Shinn, Jr., Commissioner, New Jersey Department of Environmental Protection.

Filed: May 19, 1995 as R.1995 d.302, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-1 et seq., 13:1G-1 et seq., specifically 13:1G-4.

DEP Docket Number: 08-95-02/505.

Effective Date: May 19, 1995, Readoption
June 19, 1995, Amendments and New Rules.

Expiration Date: May 19, 2000.

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The New Jersey Department of Environmental Protection (Department) is readopting the noise control rules at N.J.A.C. 7:29 with amendments and a new rule at N.J.A.C. 7:29-1.6. The readoption was proposed on March 20, 1995 at 27 N.J.R. 1091(a).

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing was held on the proposed readoption on April 12, 1995 at the Department in Trenton. Irene Kropp, Administrator of the Office of Enforcement Coordination, served as hearing officer and heard testimony. Ms. Kropp recommended that the proposed rules be adopted with the changes described in the Summary of Public Comments and Agency Responses and the Summary of Agency-Initiated Changes below. The Department accepts this recommendation. Persons may review or obtain a copy of the transcript of the hearing upon payment of the Department's normal copying charge by contacting Janis Hoagland, Esq., Office of Legal Affairs, CN 402, New Jersey Department of Environmental Protection, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

Nine people provided comments regarding this proposed readoption with amendments during the comment period, which closed on April 19, 1995. The following is a list of the people, with their affiliations, if any, who made timely oral or written comments.

Individual/Organization

1. Wayne D. DeFeo, Director, Market Development, Browning-Ferris Industries
2. Arnold D. Feldman
3. Tracye McArdle, Director/Health Officer, Atlantic County Department of Human Services
4. Gwen Nelson
5. Joseph J. Przywara, Environmental Health Coordinator, Ocean County Health Department
6. W. David Richardson, Health Officer, Manalapan Township Health Department
7. John Kapferer, New Jersey Noise Control Council
8. Sean Clancy, Atlantic County Health Department
9. Joseph Lepis on behalf of the New Jersey Noise Control Council
10. Joseph Lepis on behalf of the Hudson Regional Health Commission

The following is a summary of the comments timely submitted on the proposal and the Department's responses. The numbers in the parentheses after each comment correspond to the commenter(s) listed above.

1. COMMENT: The commenter encourages the Department to promulgate an exemption from the noise control regulations for composting facilities. Composting facilities are frequently located near residential communities, just as agricultural lands are often adjacent to housing developments. (1)

RESPONSE: The Department believes that composting is an important part of New Jersey's efforts to foster solid waste solutions that achieve State self-sufficiency and that sustain the economic viability of solid waste facilities. However, the Department believes that a composting facility fits within the definition of "industrial facility" as N.J.A.C. 7:29-1.1, which includes "property, facilities, or equipment involving the fabrication, manufacture, or production of durable or nondurable goods." Since the Department regulates noise from industrial facilities, the Department concludes that composting facilities are properly subject to the operational performance standards at N.J.A.C. 7:29-1.2. The Department further concludes that composting facilities engage in activities that are different from "agricultural activities," as that term is defined in the noise control regulations; therefore, composting facilities are distinguishable from agricultural facilities.

2. COMMENT: The Department has sidestepped the motor vehicle racetrack issue, which indicates a blatant disregard for the public's health and welfare and its concerns about racetrack noise. One commenter requested clarification as to the status of this matter. Another commenter expressed disappointment that the Department has not set a time frame for addressing the racetrack issue. (2, 4, 5)

RESPONSE: Currently, motor vehicle racetracks are exempt from compliance with the sound level standards in the regulations. The Department has received a multitude of complaints from citizens regarding the levels and duration of noise emanating from racetracks and acknowledges that noise emanating from racetracks adversely impacts the quality of life of residents living near the racetracks. The Department believes that a solution, which balances the needs of the citizens with racetrack owners, operators and fans, must be developed. The Commissioner and Department staff are committed to working with the Noise Control Council, racetrack owners and operators, residents and legislators to address this situation. The Department is currently seeking assistance from the Governor's Office in establishing a legislative initiative to develop a solution to this issue of noise from racetracks. The Department does not have a specific timeframe for addressing this matter, but as stated above, the Department is committed to working on this matter and will make every effort to effect a solution as expeditiously as possible. The exemption for noise from racetracks will not be deleted from the rules at this time.

3. COMMENT: The commenter supports delegation of environmental activities to county health departments, but increased delegation without some proportional increase in funding is inconsistent with the philosophy of "full partnership" between the Department and county health agencies. Another commenter noted that many county agencies receive limited County Environmental Health Act (CEHA) grant funding, of which most is utilized for programs other than noise. (3, 5)

RESPONSE: In the near future, the Department plans to delegate the entire noise control program to local agencies since they are better able to address noise related issues because noise problems are local in nature. Since local health agencies certified pursuant to CEHA already play a major role in implementing and enforcing the noise control regulations, the full delegation of the noise control program by the Department should not create significantly more work for these agencies. The Department recognizes that the environmental services provided by the certified local health agencies enhance the Department's efforts to protect public health and the environment and is committed to supporting its partner agencies. Currently, the Department provides funding through the CEHA grant program to 18 local health agencies which have been certified to administer a noise control program. Through the annual CEHA grant application process each certified local health agency identifies its funding needs in priority order to the Department. Generally, these funding priorities tend to focus on supporting environmental activities other than noise. The Department provides funding to CEHA agencies based on the grant application and attempts to fund these needs in the priority order identified by the agency.

4. COMMENT: Technical support and consultation from the Department with regard to noise must be available to county health departments. The Department should assign one staff person to function in a supporting capacity. A provision for this should be incorporated into the rules. (3)

RESPONSE: The Department currently relies on the Rutgers Noise Technical Assistance Center (Center) for technical guidance. The Center also provides assistance in developing local ordinances and in providing technical and health related information on noise directly to local agencies and residents. The Department has provided and will continue to provide CEHA grant money to the Center so that the local agencies may continue to obtain technical assistance from the Center with regard to noise.

Although the Department plans to delegate the entire noise control program to local agencies, the Department's Office of Local Environmental Management (Office) will continue to oversee the CEHA program. Specifically, the Office will continue to coordinate the implementation and enforcement of Department programs which are delegated to certified local health agencies by establishing enforcement protocols for these agencies, reviewing local ordinances requiring Department approval, providing guidance to local agencies regarding Department policy and regulation, issuing grants to certified local health agencies, coordinating training courses for CEHA agency personnel, and assisting CEHA personnel in resolving technical issues. The Department will continue to have a role in the CEHA program, however, it is not necessary or appropriate to include this as a provision in the regulations.

5. COMMENT: Currently, most local enforcement agencies do not provide for a Notice of Violation to be forwarded by certified mail, return receipt requested. Is such a notice requirement necessary? (5)

RESPONSE: The new rule at N.J.A.C. 7:29-1.6(d) as proposed required that when a violation is identified, the authorized enforcement agency shall issue an enforcement document to the violator by certified mail, return receipt requested. The Department acknowledges that this is not a statutory requirement; however, it has been the Department's experience that presenting enforcement documents in person or via certified mail precludes the violator from stating that he or she was not officially notified of the violation. While the Department believes that providing notice via certified mail is advantageous from an enforcement perspective, the Department is modifying this requirement on adoption to make the use of certified mail optional.

6. COMMENT: Since it is the Department's goal to transfer all noise responsibility to authorized enforcement agencies, such agencies should be

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afforded the latitude to determine their own protocol for settling cases related to minor violations. (5)

RESPONSE: Although the Department is delegating the noise program to local health agencies and municipalities, it remains the Department's goal to have consistent enforcement throughout the State to the greatest extent possible. In order to achieve this goal, the Department is adopting, in these rules, general enforcement procedures to be followed by the agencies enforcing the Noise Control Act or rules. The enforcement procedures outlined at N.J.A.C. 7:29-1.6 with regard to minor violations are generally the same procedures followed by the Department.

7. COMMENT: The commenter is pleased with the Department's proposed definition of "agricultural activities." (6)

RESPONSE: The Department appreciates the commenter's support.

8. COMMENT: The Department's proposed definition of "authorized enforcement agency" allows for considerable enforcement outside of the CEHA administrative structure. There appears to be no restriction on a local health agency training an employee to be certified in noise enforcement and then enforcing the State rule with no involvement of the approved CEHA agency in that county. (6)

RESPONSE: The Department considers local agencies to be better situated to address noise problems and plans to delegate the entire noise program to local agencies. The Department's goal is to have consistent noise enforcement throughout the State and is therefore developing a model noise control ordinance for use by municipal and county agencies. A municipal agency that has a CEHA agency in its county may elect to either refer all noise complaints to the CEHA agency to investigate or establish its own noise control program if it deems noise control as a priority within the municipality. Municipal agencies which establish a noise control program must adopt a noise control ordinance that is approved by the Department. This approval process ensures that noise enforcement programs are uniform throughout the State.

9. COMMENT: It is extremely important that the State develop a rule that takes into account the level of noise that residential communities are subjected to during motor vehicle racing events. (6)

RESPONSE: The Department does not have the technical expertise to develop noise standards specific to motor vehicle racetracks and the Noise Control Council has not provided the Department with any technical recommendations regarding this matter. The Department has determined that it is not appropriate to impose potentially severe operating restrictions on racetracks through the noise control regulations. As noted in the response to Comment 2 above, the Department will continue to work on this matter and is hopeful that the Governor's Office, via a legislative initiative, will be able to provide helpful recommendations to address noise problems associated with motor vehicle racetracks in the State.

10. COMMENT: The Noise Control Council approved the Department's proposed definition of "agricultural activities" provided it is modified to clarify that products sold on a farm must have been produced on that farm in order to constitute an agricultural activity and thus be eligible for the exemption. (7, 9)

RESPONSE: As stated in the proposal Summary (27 N.J.R. 1093), the Department believes that only the selling of farm-related products on farmlands qualifies for the exemption for agricultural activities. The commenter suggests that a farm-related product being sold on a farm must have been produced on that farm in order to meet the exemption. However, revising the definition in this manner would effectively exclude certain activities that the Department had not intended to exclude. For example, an agricultural cooperative venture, in which several area farms use one farm as a product sales center, would not fulfill the "point of production" restriction suggested by the commenter and therefore would not be exempt under the rules. However, the Department believes that such agricultural cooperative ventures should be eligible for the exemption. Accordingly, the Department declines to make the suggested change in the definition of "agricultural activities."

11. COMMENT: The Noise Control Council approved the Department's proposed definition of "authorized enforcement agency" provided it is amended to clarify that an agency's enforcement authority is limited to its area of jursidcition. (7, 9)

RESPONSE: The Department agrees with the Noise Control Council and is modifying the definition at N.J.A.C. 7:29-1.1 on adoption accordingly.

12. COMMENT: The Noise Control Council vetoed all of the proposed provisions of the rule pertaining to outdoor venues. (7)

RESPONSE: Pursuant to the Noise Control Act, at N.J.S.A. 13:1G-18i, the Noise Control Council (Council) has the authority to veto, by a majority vote of the whole Council, the adoption, amendment or repeal of any rule before promulgation of the rule by the Department. The Council has exercised this authority by vetoing the provisions of the proposal at N.J.A.C. 7:29-1.1 and 1.4(b) that pertain to outdoor venues. The Council did not provide any technical reasons for the veto nor did it suggest alternatives. Therefore, the Department is not adopting N.J.A.C. 7:29-1.4(b) and the definition of "outdoor venue" at N.J.A.C. 7:29-1.1. It is unfortunate that the Council has taken this action because it leaves the Department with no alternative except to delete these sections of the proposal. The Department intends to develop an alternate approach to address the issue of sound from outdoor venues in the near future which will be the subject of a new rule proposal. The Department will seek the Council's cooperation in that effort.

13. COMMENT: The Noise Control Council requested that the Department's proposed amendments at N.J.A.C. 7:29-2.6(a)3iii, which make certain equipment, including a tape measure, compass, and thermometer optional when measuring noise, exclude thermometers. The Council believes thermometers should be mandatory when investigating noise complaints. (7, 9)

RESPONSE: The Department disagrees. Ambient temperature only affects noise measurements when extreme weather conditions exist. The Noise Control Regulations at N.J.A.C. 7:29-2.5(a)iv state that no noise measurement shall be made when the ambient temperature is below 14 degrees Fahrenheit or above 122 degrees Fahrenheit. Therefore, use of a thermometer should be optional because weather conditions in the State do not typically reach those extremes.

14. COMMENT: The commenter acknowledged the Department's desire to have the noise control program implemented and enforced at the local level by the middle of 1995, but expressed concern because the Atlantic County Health Department has relied on the State to issue enforcement documents since the county does not have a noise control ordinance. (8)

RESPONSE: Pursuant to CEHA, the Atlantic County Health Department has been delegated authority to administer a noise control program, including the authority to enforce the provisions of the Noise Control Act and regulations adopted thereunder. Under CEHA, the Atlantic County health Department is not required to adopt a noise control ordinance in order to file noise enforcement actions in Superior Court. Nonetheless, the Department is currently working in conjunction with the Noise Control Council and the Rutgers Noise Technical Assistance Center to develop a model noise ordinance that counties and/or municipalities may adopt and enforce in municipal court. In addition, any local agency may elect to utilize the common nuisance code, instead of a noise control ordinance, to address certain local noise problems. Therefore, it is not necessary to rely on the State to issue enforcement documents.

15. COMMENT: The Department's proposed definition of "outdoor venue" should be modified to accommodate facilities that do not have tiers of seats. Restaurants, cafes, bars and nightclubs should be excluded from the definition of "outdoor venue." The exception for "outdoor venues" should begin on the Friday of Memorial Day weekend rather than on Memorial Day itself. (9)

RESPONSE: The Department believes the commenter's suggestions have merit. However, because the Noise Control Council has vetoed the proposed outdoor venue exception, the Department is not adopting the outdoor venue provisions at N.J.A.C. 7:29-1.1 and 1.4(b).

16. COMMENT: In the future, the Department should regulate noise from multi-family dwellings. (9)

RESPONSE: The noise control regulations pertain to noise emanating from stationary commercial and industrial sources. It is the Department's position that complaints of noise from within residential homes are under the purview of local law and public safety enforcement agencies and not local health agencies.

17. COMMENT: The proposed new rule at N.J.A.C. 7:29-1.6 should be clarified to indicate who receives any penalty monies collected. (9)

RESPONSE: The entity responsible for collecting penalties or fines depends on whether a certified local health agency is enforcing its noise program pursuant to CEHA delegation; a municipality is enforcing a Department approved ordinance pursuant to the Noise Control Act; or the Department itself is enforcing the State noise control regulations. Pursuant to N.J.S.A. 26:3A2-35, fines or penalties collected by a certified local health agency pursuant to CEHA will be deposited into an "Environmental Quality and Enforcement Fund." Penalty monies collected by a municipality enforcing its own local ordinance will be retained by the municipality. Finally, if the Department enforces its noise control regulations at N.J.A.C. 7:29, fines or penalties will be remitted to the New Jersey State Treasurer. Since there are different scenarios depending on the enforcing entity, as described above, the Department has determined that it will not add a provision at N.J.A.C. 7:29-1.6 to explain the deposition of penalty monies.

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Summary of Agency-Initiated Changes:

The Department has revised the definition of "authorized enforcement agency" at N.J.A.C. 7:29-1.1 to clarify that a county or regional health agency may also be certified pursuant to CEHA and thus be considered an authorized enforcement agency.

The Department has amended N.J.A.C. 7:29-2.11(a)3 to provide that any person who believes he or she is qualified to perform noise measurements as result of his or her education and/or experience may submit information to the Department that demonstrates that the person's education and/or experience is equivalent to either the Department-sanctioned noise investigator re-certification course offered through Rutgers University or the Department's tutoring and training program.

Executive Order No. 27 Statement

Executive Order No. 27(1994), which became effective on January 2, 1995, was signed by Governor Whitman in order to prevent unnecessary State regulations in areas that are already regulated by the Federal government. In implementing Executive Order No. 27, administrative agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements are required to include a comparison with Federal law.

The readoption with amendments of N.J.A.C. 7:29 and the new rule at N.J.A.C. 7:29-1.6 do not impose any standards or requirements which exceed the standards or requirements imposed by any applicable Federal law.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:29.

Full text of the adopted amendments and new rule follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

7:29-1.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Agricultural activities" means those activities performed on farmlands in order to cultivate the soil, produce crops, or raise livestock. In addition, activities associated with the growing, producing, processing, or selling of farm-related products, as long as those activities are conducted on farmlands, would be considered agricultural activities.

"Authorized enforcement agency" means the Department, a local *, **county or regional*** health agency certified pursuant to the County Environmental Health Act (N.J.S.A. 26:3A2-21 et seq.) to perform noise enforcement activities, a municipality with a Department approved noise control ordinance, or an employee of a county or municipal government who has received noise enforcement training and who is currently certified in noise enforcement ***, provided such agency, municipality or employee is acting within its designated jurisdiction***.

"Emergency" means an unexpected occurrence or situation resulting from natural or unnatural causes which endangers or has the potential to endanger the health, safety or resources of citizens or a municipality, and as such, necessitates prompt action and response on the part of emergency services personnel.

. . .

"Emergency services personnel" means those people who are trained or designated to respond to an emergency, as defined in this section, or who participate in activities associated with a response to an emergency.

. . .

["Outdoor venue" means a stadium, arena, amphitheater, open air theater or other similar permanent facility, either unenclosed or partially enclosed, with seats around an arena, stage or central area which is utilized for the presentation of music, theater, sports, or other forms of entertainment.]

. . .

"Stationary emergency signaling device" means any device, excluding those attached to motor vehicles, used to alert local persons engaged in local emergency operations. These include, but are not limited to, fire-fighters, first aid squad members, and law enforcement officers, whether paid or volunteer.

7:29-1.3 Stationary emergency signaling devices

(a)-(b) (No change.)

(c) Stationary emergency signaling devices shall be used only for testing in compliance with applicable provisions of these regulations and for emergency purposes where personnel and equipment are mobilized. Since personnel and equipment are mobilized during a weather emergency, emergency signaling devices may be utilized to announce a school closing resulting from a weather emergency.

(d) A stationary emergency signaling device used to alert firefighters, or other emergency services personnel of a fire or other emergency shall be located no closer than 250 feet from any elementary school or adjacent school yard or playground, except that this restriction shall not apply to any stationary emergency signaling device that is located on the premises of a fire station or other facility operated by a local fire department or force or first aid, rescue or emergency squad.

(e) The requirement of (d) above shall not apply to stationary emergency signaling devices placed in service before July 16, 1992 and located in municipalities with a population of less than 25,000 persons and with a population density of more than 2,500 persons per square mile, according to the latest Federal decennial census.

(f) Nothing in this section shall have the effect of restricting the use of a stationary emergency signaling device to alert the public of an emergency pursuant to the provisions of the emergency management act, P.L. 1942, c.251 (N.J.S.A. App. A:9-33 et seq.), or any applicable Federal laws or regulations pertaining to emergency planning and preparedness. The requirements of this section do not apply to the use of stationary emergency signaling devices to warn the public or emergency personnel of a national or State emergency pursuant to the provisions of the emergency management act. This section only pertains to the use of stationary emergency signaling devices to alert local emergency services personnel and/or local citizens of a local emergency such as a fire. This section also does not apply when stationary emergency signaling devices are used or tested as part of the operations of the National Warning System, pursuant to the Federal Emergency Management Agency's Civil Preparedness Guide 1-16, or pursuant to the Federal Emergency Management Agency's Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants, FEMA Rep. 10.

(g) A dual-purpose stationary emergency signaling device which is used to alert the public of a national or State emergency and which is also used to alert local emergency services personnel of local emergencies shall not be required to comply with N.J.A.C. 7:29-1.3(d), (e) and (f). If a dual purpose stationary emergency signaling device is used for local purposes, the device shall comply with all other provisions of this section.

(h) When operated or tested in accordance with the requirements of this section, stationary emergency signaling devices are not required to comply with the operational performance standards established at N.J.A.C. 7:29-1.2.

7:29-1.4 Exceptions

(a) The operational performance standards established at N.J.A.C. 7:29-1.2 shall not apply to any of the following noise sources:

1. Agricultural activities;

2.-11. (No change.)

12. Use of explosive devices: These are regulated by the New Jersey Department of Labor under the 1960 Explosive Act (N.J.S.A. 21:1A-1 to 21:1A-144); or

13. Normal operation of a handgun, rifle, shotgun, skeet shooting or trapshooting range which has been maintained continuously in the same location since January 24, 1972.

*[(b) The operational performance standards established at N.J.A.C. 7:29-1.2 shall be modified, as follows, when applied to sound from outdoor venues. Outdoor venues shall not be permitted to emit continuous airborne sound, when measured at any residential property line, in excess of the following:

1. 65 dBA from 7:00 A.M. to 11:00 P.M. during the period between Memorial Day and Labor Day, inclusive.

2. 50 dBA from 11:00 P.M. to 7:00 A.M. during the period between Memorial Day and Labor Day, inclusive.

3. During all other times of the year, outdoor venues shall comply with all operational performance standards in N.J.A.C. 7:29-1.2.]*

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7:29-1.5 Performance test principle

For the purposes of measuring sound in accordance with the applicable provisions of these regulations, test equipment methods and procedures shall conform to the provisions of N.J.A.C. 7:29-2.

7:29-1.6 Enforcement

(a) This section governs the initiation of enforcement actions and the imposition of civil penalties for violations of the Noise Control Act, N.J.S.A. 13:1G-1 et seq., and these rules.

(b) If any person violates any provision of the Noise Control Act, N.J.S.A. 13:1G-1 et seq., these rules, or an order issued pursuant thereto, the authorized enforcement agency may institute an action in a court of competent jurisdiction for injunctive relief to prohibit and prevent such violation or violations and the said court may proceed in the action in a summary manner.

(c) Any person who violates any provision of the Noise Control Act, N.J.S.A. 13:1G-1 et seq., these rules, or an order issued pursuant thereto shall be subject, upon order of a court, to a civil penalty of not more than $3,000 for each offense and each day during which the violation continues shall constitute an additional, separate and distinct offense.

(d) Upon identification of a violation of the Noise Control Act, N.J.S.A. 13:1G-1 et seq., these rules, or an order issued pursuant thereto, the authorized enforcement agency shall issue an enforcement document to the violator. The enforcement document *[shall]* ***may*** be sent to the violator by certified mail, return receipt requested. The enforcement document shall:

1. Identify the condition or activity that constitutes the violation and the specific provision of the Act, rule or order that has been violated;

2. Indicate whether the violator has a period of time to correct the violation before a penalty is sought, as follows:

i. If the violation is deemed by the authorized enforcement agency to be a minor violation pursuant to (f) below, notify the violator that the activity or condition which constitutes the violation must be corrected and compliance achieved within 30 days or, at the discretion of the authorized enforcement agency, any other reasonable period of time, not to exceed 180 days, to be determined based upon the nature and extent of the violation and a reasonable estimate of the time needed to correct the violation. The violator may request, from the authorized enforcement agency, an extension of the compliance deadline in the enforcement action and the authorized enforcement agency shall approve any reasonable request for an extension if the violator can demonstrate that a good faith effort has been made to achieve compliance;

ii. If the violation is not deemed by the authorized enforcement agency to be a minor violation pursuant to (f) below, notify the violator that he or she will not be allowed a period of time to correct the violation before a penalty is sought.

3. Notify the violator that he or she may be liable to a civil penalty of no more than $3,000 for the violation that is the subject of the enforcement document; and

4. If the violation is deemed by the authorized enforcement agency to be a minor violation pursuant to (f) below, notify the violator that if he or she achieves compliance within the period of time specified in the enforcement document, the authorized enforcement agency shall not seek to collect a civil penalty from the violator for that violation.

(e) The authorized enforcement agency may seek injunctive relief and/or a penalty for a violation of the Act, these rules, or an order issued pursuant thereto:

1. If the violator does not correct the minor violation within the period of time specified in the enforcement document initiated pursuant to (d) above; or

2. If the violation is not considered a minor violation pursuant to (f) below.

(f) A violation shall be considered a minor violation if:

1. The violation is not the result of the purposeful, reckless or criminally negligent conduct of the violator; and

2. The activity or condition constituting the violation has not been the subject of an enforcement action by the authorized enforcement agency against the violator within the immediately preceding 12 months.

(g) Any claim for a civil penalty may be compromised and settled based on the following factors:

1. Mitigating or any other extenuating circumstances;

2. The timely implementation by the violator of measures which lead to compliance;

3. The conduct of the violator; and

4. The compliance history of the violator.

7:29-2.6 Equipment

(a) Requirements for equipment are as follows:

1.-2. (No change.)

3. Other equipment:

i.-ii. (No change.)

iii. Optional equipment including a flashlight or miner's lamp, a microphone extension cable, an extension pole with microphone holder, a headphone equipped with a plug to fit the sound level meter, a tape measure or an optical distance indicator for determining distance, a compass for determining direction or, alternatively, a suitable map of the vicinity, and a thermometer for determining ambient temperature.

7:29-2.11 Qualifications of investigative personnel

(a) For the purposes of this procedure, a person shall be considered qualified to make noise measurements if such person:

1. Completes, at least once every two years, a noise re-certification course which is offered by the Department of Environmental Sciences of Cook College, Rutgers, the State University; or

2. Completes a program of tutoring and on-the-job training offered by the Office of Noise Control to its employees; or

3. Has education or experience or a combination thereof *[certified]* ***approved*** by the Department as equivalent to the provisions of (a)1 or (a)2 above. ***Any person who believes he or she is qualified to perform noise investigations pursuant to this paragraph may submit to the Department sufficient information to demonstrate that his or her education and/or experience is equivalent to the provisions of (a)1 or (a)2 above. The Department will then render a decision regarding whether the person is qualified to perform noise investigations.***

HEALTH

(a)

MANAGEMENT AND ADMINISTRATION

Disability Discrimination Grievance Procedure

Adopted New Rules: N.J.A.C. 8:1-1

Proposed: May 16, 1994 at 26 N.J.R. 2005(a).

Adopted: May 16, 1995 by Len Fishman, Commissioner, Department of Health.

Filed: May 16, 1995 as R.1995 d.301, **without change.**

Authority: N.J.S.A. 52:17B-4d, 42 U.S.C. 12101 et seq. and 28 C.F.R. 35.107.

Effective Date: June 19, 1995.

Expiration Date: June 19, 2000.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

These new rules are adopted in order to comply with the Americans with Disabilities Act, also known as the ADA (42 U.S.C.A. 12101 et seq.). The adopted rules do not exceed any of the standards or requirements of this Act.

Full text of the adoption follows:

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CHAPTER 1
DISABILITY DISCRIMINATION GRIEVANCE PROCEDURE

SUBCHAPTER 1. GENERAL PROVISIONS

8:1-1.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §§12101 et seq.

"Agency" means the Department of Health.

"Designated decision maker" means the Commissioner of Health or a designee of the Commissioner of Health.

8:1-1.2 Purpose

(a) These rules are adopted by the agency in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 C.F.R. 35.107.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint files with the agency pursuant to N.J.A.C. 8:1-1.5 through 1.8.

8:1-1.3 Required ADA notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the agency's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency.

AGENCY NOTICE OF ADA PROCEDURE

The agency has adopted an internal grievance procedure providing for prompt and equitable resolution of grievances alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act. Title II states, in part, that "no otherwise qualified disabled individuals shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity.

Rules describing and governing the internal grievance procedure can be found in the New Jersey Administrative Code, N.J.A.C. 8:1-1. As those rules indicate, grievances should be addressed to the agency's designated ADA Coordinator who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator
Department of Health
Health and Agriculture Building
8th Floor
CN 360
Trenton, New Jersey 08625

1. A grievance may be filed in writing, orally, or on audio tape, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator. If the grievance is filed orally, the ADA coordinator or designate shall complete the form, read back to the grievant the form as written, and note and sign a statement to the effect that the grievant is in agreement with the statement of the grievance. In cases of employment related complaints, the procedures established by the Department of Personnel, N.J.A.C. 4A:7-1.1 et seq. will be followed where applicable.

2. A grievance should be filed promptly within 30 days after the grievant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis).

3. An investigation, as may be appropriate, will follow the filing of a grievance. The investigation will be conducted by the agency's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a grievance.

4. In most cases a written determination as to the validity of the grievance and a description of the resolution, if any, will be issued by the designated decision maker and a copy forwarded to the grievant no later than 45 days after its filing.

5. The ADA Coordinator will maintain the files and records of the grievance filed.

6. The right of a person to a prompt and equitable resolution of the grievance filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA complaint with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing Federal rules.

8:1-1.4 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and grievance investigation for the agency is:

ADA Coordinator
New Jersey Department of Health
Health and Agriculture Building
8th Floor
CN 360
Trenton, New Jersey 08625

(b) All inquiries regarding the agency's compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency should be directed to the designated coordinator identified in (a) above.

(c) All grievances alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in this subchapter.

8:1-1.5 Grievance procedure

A grievance alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in N.J.A.C. 8:1-1.4 within 30 days of the grievant becoming aware of the alleged violation. A grievance alleging employment discrimination will be processed pursuant to the rules of the Department of Personnel, N.J.A.C. 4A:7-1.1 through 3.4, if those rules are applicable.

8:1-1.6 Grievance contents

(a) A grievance submitted pursuant to the subchapter may be submitted in or on the form set forth at N.J.A.C. 8:1-1.7.

(b) A grievance submitted pursuant to this subchapter shall include the following information:

1. The name of the grievant and/or any alternate contact person designated by the grievant to receive communication or provide information for the grievant;

2. The address and telephone number of the grievant or alternate contact person; and

3. A description of manner in which the ADA has not been complied with or has been violated, including times and locations of events and names of witnesses, if appropriate.

8:1-1.7 Grievance form

The following form may be utilized for the submission of a grievance pursuant to this subchapter:

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Americans with Disabilities Act Grievance Form

Date: _____

Name of Grievant: _____

Address of Grievant: _____

_____

_____

Telephone Number of Grievant: _____

Alternate Contact Person: _____

Address of Alternate Contact Person: _____

_____

Telephone Number of Alternate Contact Person: _____

Division Alleged to have Denied Access: _____

Office/Unit: _____

Location: _____

INCIDENT OR BARRIER: Please describe the particular way in which you believe you have been denied the benefits of any service, program, or activity or have otherwise been subject to discrimination. Specify dates, times, and places of incidents, and names and/or positions of agency employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incidents. Attach additional pages if necessary.

_____

_____

_____

_____

_____

PROPOSED ACCESS OR ACCOMMODATION: If you wish, describe the way in which you feel access may be had to the benefits described above, or that accommodation could be provided to allow access.

_____

_____

_____

_____

A copy of the above form may be obtained by contacting the designated ADA Coordinator identified at N.J.A.C. 8:1-1.4.

8:1-1.8 Investigation

(a) Upon receipt of a grievance submitted pursuant to this subchapter, the designated ADA coordinator will notify the grievant of the receipt of the grievance and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 45 days from the date of receipt of the grievance, if practicable or unless a later date is agreed to by the grievant.

(b) Upon completion of the investigation, the designated ADA coordinator shall prepare a report for review by the designated decision maker for the agency. The designated decision maker shall render a written decision within 45 days of receipt of the grievance, if practicable or unless a later date is agreed to by the grievant, which decision shall be transmitted to the grievant and/or the alternate contact person if so designated by the grievant.

(a)

DIVISION OF HEALTH CARE SYSTEMS ANALYSIS

Certificate of Need: Designation of Trauma Centers, Level I and Level II

Adopted New Rules: N.J.A.C. 8:33P

Proposed: April 3, 1995 at 27 N.J.R. 1350(a).

Adopted: May 25, 1995 by Len Fishman, Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: May 26, 1995 as R.1995 d.328, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq.

Effective Date: June 19, 1995.

Expiration Date: June 19, 1997.

Summary of Public Comments and Agency Responses:
No comment received.

Executive Order No. 27 Statement

The adopted new rules do not impose standards on trauma providers in New Jersey that exceed those contained in Federal law or regulation. There is no direct Federal regulation of trauma centers or trauma services. The Federal policy expressed in the "Trauma Care Systems Planning and Development Act of 1990", 42 U.S.C. §300d et seq., is to encourage states to develop standards concerning trauma center designation, as well as trauma triage, transfer, and transportation policies (see 42 U.S.C. §300d-13(b)). Developing and maintaining these regulations and related trauma policies conforms to this Federal policy and permits the state of New Jersey to continue to receive Federal funding authorized by the Act for its efforts to maintain an efficient and effective statewide trauma network.

Full text of the adopted new rules can be found in the New Jersey Administrative Code at N.J.A.C. 8:33P.

HIGHER EDUCATION

(b)

COMMISSION ON HIGHER EDUCATION

Licensing Standards

Readoption With Amendments: N.J.A.C. 9:1

Proposed: April 3, 1995 at 27 N.J.R. 1381(b).

Adopted: May 26, 1995 by the Commission on Higher Education, Joseph D. Williams, Chairman.

Filed: May 26, 1995 as R.1995 d.333, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:3B-14(d).

Effective Date: May 26, 1995, Readoption
June 19, 1995, Amendments.

Expiration Date: May 26, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

The readoption with technical amendments of N.J.A.C. 9:1 are not subject to the Federal exceedance standards because the licensure function of the Commission on Higher Education is not subject to any Federal requirements or standards.

Summary of Changes Upon Adoption:

Typographical errors are corrected at N.J.A.C. 9:1-1.1(d), 1.2, 2.2(e)7, 6.1(c), 6.3(a)4, and 6.3(b)2.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 9:1.

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Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 1
LICENSING STANDARDS

SUBCHAPTER 1. RULES FOR NEW JERSEY INSTITUTIONS OF HIGHER EDUCATION

9:1-1.1 Authority, purpose and scope

(a) New Jersey statutes provide that corporations furnishing instruction or learning leading to a diploma or degree shall obtain from the New Jersey Commission on Higher Education "a license to carry on the business under such rules as the Commission may prescribe" (see N.J.S.A. 18A:68-3).

(b) To assist institutions seeking to fulfill the necessary requirements outlined in N.J.S.A. 18A:68-3 and 18A:68-6 and to aid the New Jersey Commission on Higher Education in making judgments concerning institutions, the Commission has from time to time set forth rules pertaining to licensure and approval. These newly revised rules have been drafted to serve the above mentioned purpose. These rules were reviewed by the presidents of the New Jersey institutions of higher education prior to their adoption by the Commission on Higher Education. In developing and administering the rules for licensure, the Commission is mindful of the responsibilities vested in the trustees of individual institutions and of the institutional autonomy that is characteristic of American higher education. These rules delineate the Commission's expectations for degree granting institutions of higher education; in the case of institutions already licensed and accredited, they do not contemplate that, in the absence of compelling reason, the Commission will substitute its review processes (N.J.A.C. 9:1-2.1) for those of the institutions themselves or for those of the established accrediting agencies.

(c) The following assumptions governed the drafting of these rules and serve to define their scope and intention:

1. The rules in this chapter shall apply to all colleges in New Jersey generally except where other statutes and Commission on Higher Education rules exist that supplement these rules or more specifically govern the situation such as "Regulations Governing County Community Colleges;" "State College Administrative Code," and so forth).

2.-3. (No change.)

4. The rules are intended to make the applications of the law specific and have the effect of law (for example, "Copies of all statements of purpose shall be filed with the Commission").

5. (No change.)

6. While the ultimate responsibility for the enforcement of the rules must by law rest with the New Jersey Commission on Higher Education, the Commission may choose to look to the educational community for the sources of good practice in academic and financial management that have already won peer group approval.

7. (No change.)

8. Specific interpretations of such words as "adequate," and so forth, are to be determined by the New Jersey Commission on Higher Education in accord with existing standards of good peer group practice; and

9. (No change.)

(d) In addition to those provisions of Title 18 developed in these rules and the standards therein, the New Jersey Commission on Higher Education is further charged by statute with special responsibilities for the public institutions. Other documents, such as the county community college regulations and standards and policy statements concerning the State colleges and *[The]* ***the*** State university should be consulted.

9:1-1.2 Definitions

The following words and terms, when used in this subchapter***,*** shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Adequate, appropriate, equivalent, significant, suitable, and sufficient" mean adequate, appropriate, equivalent, significant, suitable, and sufficient, respectively, in the judgment of the New Jersey Commission on Higher Education.

. . .

"Branch campus" is a physical facility located at a place other than the institution's principal campus offering one or more complete programs leading to a credit bearing certificate, degree or diploma, without regard to the number of courses and course enrollments per academic year. A branch campus requires approval by the New Jersey Commission on Higher Education.

. . .

"Extension center" means a physical facility located at a place other than the institution's principal campus with no complete credit bearing certificate, diploma or degree programs but more than 15 courses for credit or more than 350 course enrollments for credit in any academic year. The establishment of an extension center requires approval by the Executive Director of the New Jersey Commission on Higher Education.

. . .

9:1-1.3 Mission Statement

(a) (No change.)

(b) Copies of all Mission Statements shall be filed with the New Jersey Commission on Higher Education.

(c)-(d) (No change.)

9:1-1.4 Organization and administration

(a)-(d) (No change.)

(e) Under the governing board, the duties of the chief executive should include, but not be limited to, the following:

Recodify existing i.-iii. as 1.-3. (No change in text.)

4. To prepare and submit an annual report and any other reports as may be requested by the governing board or by the New Jersey Commission on Higher Education.

5. (No change in text.)

(f)-(h) (No change.)

9:1-1.5 Finances

(a)-(d) (No change.)

(e) Each independent institution shall furnish to the New Jersey Commission on Higher Education a copy of the institution's audited financial statement. With the exception of those independent institutions receiving funding under the Independent College and University Assistance Act (ICUAA), N.J.S.A. 18A:72B-15 et seq., all other independent institutions, including special purpose and theological institutions, shall submit these statements to the Commission on or before December 31 of each year. The ICUAA institutions shall furnish the audited financial statements to the Commission on or before November 1 of each year in accordance with N.J.A.C. 9:14-1.2(d).

(f) (No change.)

9:1-1.6 Educational programs

(a)-(e) (No change.)

(f) Institutions planning an educational program shall not offer or advertise the program or recruit or enroll students in the program until the program has been registered with the New Jersey Commission on Higher Education.

(g)-(j) (No change.)

9:1-1.7 Off-campus offerings

(a) (No change.)

(b) The establishment of extension centers shall have prior approval of the Executive Director of the Commission on Higher Education. The establishment of branch campuses shall have prior approval of the New Jersey Commission on Higher Education. In requesting approval for Extension Centers and Branch Campuses, a formal request shall be submitted to the New Jersey Commission on Higher Education which shall include a statement justifying the need for the site and a description of proposed courses/programs. It shall also include evidence that the proposed courses/programs at the off-campus site are at least equivalent in quality to the comparable courses/programs on the main campus and that the institution has provided for effective monitoring and control for the maintenance of quality. Specifically, it shall include:

1.-3. (No change.)

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(c) Upon receipt of a request for approval of an Extension Center or a Branch Campus, Commission staff shall provide to all New Jersey institutions of higher education a summary of the request to enable the institutions to inform the Commission as to how they would be affected by the proposed Extension Center or Branch Campus. Extension Centers and Branch Campuses will be approved for a period of up to five years for those institutions which are not Middle States accredited; reapproval at the end of this period will be considered following the submission by the institution of a new request for approval. Reapproval of branch campuses and extension centers for Middle States accredited institutions is contingent upon a positive evaluation of these sites at scheduled accreditation visits conducted by the Middle States team and the Commission on Higher Education representatives. In every instance when a New Jersey Commission on Higher Education-registered degree program, not previously offered at a particular Branch Campus, is contemplated as an addition to branch campus offerings, the procedures identified in (b) above and this subsection shall apply and Commission on Higher Education approval is required. An institution proposing to offer at a Branch Campus a degree program which has not been previously offered at the main campus shall submit appropriate information to the Presidents' Council for review.

(d) Off-campus sites at which credit courses are offered by a college in conjunction with or under contract with a non-collegiate organization must be approved by the Executive Director of the Commission on Higher Education regardless of the size or scope of the effort. If a complete degree, certificate, or diploma program is offered under such an arrangement, it must be handled under the same procedure as holds for any Branch Campus. The approval process will include a review of the college's adherence to the following standards:

1.-8. (No change.)

(e) All institutions shall submit reports at the Executive Director's request on each off-campus site.

(f) (No change.)

(g) The Executive Director of the Commission on Higher Education should be notified at the time an institution formally determines that there is no longer a need for approved off-campus sites and discontinues offerings at that site. Discontinuance of a branch campus requires Commission on Higher Education approval.

9:1-1.10 Students and student services

(a)-(c) (No change.)

(d) An institution shall maintain transcripts for all students and shall provide transcripts to all students who request them showing dates of attendance and academic performance. Should an institution terminate its activity, adequate provisions shall be made through the New Jersey Commission on Higher Education for the permanent deposit of and access to student transcripts.

9:1-1.13 College credit courses offered in New Jersey secondary schools by colleges and universities

(a)-(i) (No change.)

(j) Before enrolling, each student shall be given a written statement making clear that there is no obligation to attend the college offering the course, and making clear the credits may not be acceptable at other institutions. That statement and an up-to-date list of those institutions that have given recognition to the credits earned by previous participants shall be included in the application of the college to the New Jersey Commission on Higher Education to offer college level courses at a high school.

(k) Each college shall report annually to the Commission on Higher Education the number and title of courses offered in New Jersey, the names of the New Jersey high schools in which the courses were offered, the number of students in each course in each New Jersey high school, the credits gained, the colleges at which the New Jersey students enrolled, the numbers and percentage of credits accepted by the enrolling colleges, the value of the program in the students' view and such other appropriate information as shall be specified from time to time.

(l) (No change.)

SUBCHAPTER 2. LICENSURE WITH RESPECT TO CERTAIN INSTITUTIONS OF HIGHER EDUCATION IN NEW JERSEY

9:1-2.1 Licensure of New Jersey institutions regionally accredited

(a) With respect to institutions accredited by the Middle States Association the New Jersey Commission on Higher Education will ordinarily accept such accreditation as sufficient for the continuance of licensure and approval, provided that the institution shall submit to the Executive Director of the Commission on Higher Education within 30 days of its receipt of the letter of the Middle States Association informing the institution of its accreditation status and provided that the representatives of the Executive Director working with the Middle States team participate fully in accreditation visits, excluding voting privileges with respect to recommendations related to accreditation status.

(b) The Executive Director may proceed separately with respect to an institution and recommend to the Commission on Higher Education with respect to the continuation of institutional license.

(c) The Commission on Higher Education may direct the Executive Director at any time to proceed with respect to any particular institution as though that institution were not accredited by the Middle States Association.

9:1-2.2 Licensure and Approval Advisory Board

(a) The Licensure and Approval Advisory Board shall consist of a representative of Rutgers, The State University, designated by the President of the University; a representative of the New Jersey Institute of Technology designated by the NJIT President; a representative of the University of Medicine and Dentistry of New Jersey designated by the President of the University; two representatives of the State Colleges designated by the New Jersey State College Governing Boards Association; two representatives of the County Colleges designated by the Council of County Colleges; three representatives of the Association of Independent Colleges and Universities in New Jersey designated by the Association; three persons representative of the independent colleges not members of the aforesaid Association selected as hereinafter provided; and one representative of the Commision on Higher Education staff designated by the Executive Director of the Commission serving as an ex officio non-voting member.

(b) The representatives of the independent colleges not members of the Association of Independent Colleges and Universities in New Jersey shall be chosen by the ballot at a meeting of the presidents of these institutions to be convened by the Executive Director of the Commission on Higher Education when appropriate for this purpose. The persons having the highest number of votes, provided it is a majority of the total number of votes cast, shall be declared elected. In the case of a tie, the Executive Director shall break the tie; in the case of an inability to elect, the Executive Director shall designate the person to serve.

(c) The term of membership on the Advisory Board shall be three years except in the case of the Commission on Higher Education representative. Members may be reappointed. Vacancies shall be filled for any expired term.

(d) The Advisory board shall elect its own officers and determine its own rules of procedure. The Commission on Higher Education shall provide the Advisory Board with staff and secretarial assistance.

(e) The responsibilities of the Licensure and Approval Advisory Board will be as follows:

1. To advise the Commission on Higher Education with respect to policies for licensure and degree approval designed to promote the maintenance of educational quality and the optimal use of educational resources in the State;

2. To recommend to the Commission on Higher Education action on petitions for licensure by independent New Jersey institutions not regionally accredited;

3. To recommend to the Commission on Higher Education action on petitions for licensure by any out-of-state institutions;

4. To advise the Executive Director, when requested, with respect to reports filed with the Commission on Higher Education by any New Jersey institution, public or independent, or by committees that may from time to time be appointed to visit institutions of higher education operating in the State;

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5. To advise the Commission on Higher Education, when requested, as to the action to be taken with respect to any college or university, public or independent, whose educational quality may be called in question;

6. To review any proposed action by the Commission on Higher Education with respect to any institution which could result in the revocation of licensure or the withdrawal of approval to confer degrees. The Executive Director will request and the Advisory Board will provide an advisory opinion before the statutory procedures are invokved by the Commission on Higher Education; and

7. To advise the Executive Director*,* when requested, with respect to any matters the Commission may deem appropriate.

9:1-2.3 (Reserved)

9:1-2.4 (Reserved)

SUBCHAPTER 3. CHARACTERISTICS OF A UNIVERSITY

9:1-3.1 Programs

(a) (No change.)

(b) The traditional university provides a wide range of undergraduate studies and graduate studies in two or more professional fields, such as medicine, law, public administration, engineering, or education, and operative programs of instruction leading to the doctorate or comparable terminal degrees in two or more areas. A university should offer a range of graduate studies related to those fields in which it offers advanced degrees to provide students elective opportunities and a selection of support studies which may be useful but not prescribed by a graduate degree program. Additionally, a university should explore the possibilities of public service.

(c) A university whose major focus is on teaching provides a wide range of undergraduate programs and provides graduate programs in at least three academic disciplines. A teaching university has a minimum of 2,500 full-time equivalent (FTE) students. A least 20 percent of the university's total student body (headcount) are enrolled in graduate degree programs. Institutions failing to meet the minimum enrollment of 2,500 FTE students and/or the 20 percent or more graduate degree enrollment figure may still be eligible for university designation if a Commission on Higher Education out-of-State consultant(s) so recommends upon review of the institution's petition.

9:1-3.2 Organization

(a) (No change.)

(b) A university recruits faculty for graduate or professional programs whose competence is known beyond the institution. A significant number of faculty in each graduate program are associated with the institution full time, have attained the doctorate or have terminal degrees appropriate to their disciplines or records of substantial and superior professional achievements, and remain abreast of their respective fields. The faculty, including representation from the departments offering graduate programs, participates in the initiation, development, and approval of curricula as the institution determines.

(c) (No change.)

9:1-3.4 Accreditation

A university is accredited by the Middle States Association of Colleges and Schools, Commission on Higher Education.

9:1-3.5 Eligibility for university status and use of "university" as part of an institution's name

(a) Nonprofit educational institutions incorporated and located in New Jersey and licensed by the former New Jersey Board of Higher Education before June 30, 1994 or by the New Jersey Commission on Higher Education thereafter which believe they meet all the requirements stipulated in this subchapter are eligible to apply, with the concurrence of their governing boards, to the New Jersey Commission on Higher Education for university status. Educational institutions dedicated primarily to the education or training of ministers, priests, rabbis, or other professional persons in the field of religion are not eligible to apply for university status.

(b) When an institution's governing body determines that the institution shall seek university status, it shall file with the New Jersey Commission on Higher Education an application which shall demonstrate the institution's eligibility for designation as a university.

(c) University status and the actual title of the institution require the approval of the New Jersey Commission on Higher Education.

SUBCHAPTER 4. RULES FOR GRADUATE PROGRAMS WHEN CONDUCTING LICENSURE AND RELICENSURE REVIEWS

9:1-4.1 (Reserved)

9:1-4.2 Review

Graduate programs shall be reviewed periodically. Such reviews shall be conducted by the institutions themselves and cooperatively, insofar as possible, with regional and professional accrediting agencies.

9:1-4.3 Objectives and nature of graduate work

The objectives of every graduate or graduate professional program shall be clearly defined and stated. The work in such programs shall be beyond the baccalaureate level in intellectual demand; and a substantial proportion of the work shall be taken in courses designed explicitly for graduate students, although occasionally exceptionally well qualified undergraduates may be admitted.

9:1-4.6 Post-master's programs

(a) Institutions may organize programs of graduate work at the post-master's level that are not intended to lead to doctorates but to specialist's degrees or to comparable certificates.

(b)-(e) (No change.)

9:1-4.7 Doctoral degree programs

(a)-(d) (No change.)

(e) In developing doctoral programs, an institution shall demonstrate that:

1.-3. (No change.)

4. Above all, its faculty is recognized beyond the bounds of the institution as possessing professional qualifications and research achievements sufficient to support doctoral programs;

5. (No change.)

6. Its programs are supported by related studies and research in ancillary fields; and

7. (No change.)

SUBCHAPTER 5. RULES FOR PROPRIETARY INSTITUTIONS OF HIGHER EDUCATION IN NEW JERSEY

9:1-5.1 General provisions

(a) Proprietary institutions of higher education in New Jersey may be licensed to award academic degrees subject to conformance with the regulations and standards for such licensure as contained in N.J.A.C. 9:1-1.

(b) The rules in this subchapter are designed to recognize the distinctive character of proprietary institutions and for these institutions take precedence over any regulations and standards with which they may be in conflict.

9:1-5.2 (Reserved)

9:1-5.4 Duration of license

(a) Any license to operate and grant a degree shall be for a specific period, not to exceed five years, as determined by the New Jersey Commission on Higher Education.

(b) At the expiration of this period, license must be reviewed, renewed or revoked at the discretion of the Commission on Higher Education.

9:1-5.10 Basic skills testing and enrollment in remedial courses

Proprietary institutions shall be subject to any policies regarding basic skills testing and remedial instruction as may be adopted by the New Jersey Commission on Higher Education.

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SUBCHAPTER 6. RULES REGARDING PETITIONS FROM OUT-OF-STATE INSTITUTIONS DESIRING TO OFFER CREDIT-BEARING COURSES OR DEGREE PROGRAMS IN NEW JERSEY

9:1-6.1 Review of petitions

(a) The New Jersey Commission on Higher Education in its coordinating capacity will review all petitions from out-of-state institutions to offer credit-bearing courses or degree programs in New Jersey from a statewide perspective. The Commission will approve only those offerings that in the opinion of the Commission meet state standards for program quality, are fiscally viable, serve a demonstrable need, and are in accordance with the Statewide Plan. Whenever a course or program is approved by the Commission for presentation within the State by an out-of-state institution, said offering shall not preclude the right of an institution within the State to develop a similar program or course offering.

(b) (No change.)

(c) Institutions which have been providing credit-bearing courses in New Jersey with the approval of the former Board of Higher Education or the New Jersey Commission on Higher Education for at least five consecutive years, may have courses approved by the Commission on Higher Education for a period of up to five years, if the institution during this five-year period annually provides to the Executive Director of the Commission on Higher Education, six months prior to desired implementation, an update of the information required pursuant to N.J.A.C. 9:1-6.2(c). If during the five-year approval period the Commission determines, in conjunction with the Licensure and Approval Advisory Board (LAAB), from a review of the annual materials submitted by the institution, that there is a significant change in the offerings and/or additional or different resources are needed to provide educational services of quality or if there is a change in the status of the institution, the Executive Director shall have the option of submitting the matter to the New Jersey Commission on Higher Education for its review. The New Jersey Commission on Higher Education's denial of such a modification shall serve to revoke approval for the period of time remaining in the existing five-year ***approval*** period.

9:1-6.2 Petitions from institutions

(a) Out-of-state institutions wishing to offer credit-bearing courses or degree programs in New Jersey shall petition the New Jersey Commission on Higher Education for authorization.

(b) (No change.)

(c) The petition shall contain:

1.-6. (No change.)

7. Other information which the Commission specifically requests.

9:1-6.3 New Jersey Commission on Higher Education review procedures

(a) Petitions from out-of-state institutions invited by in-state parties to offer educational services to a specific and delimited constituency in New Jersey:

1. Upon receipt of petition, the Commission shall provide to all New Jersey institutions of higher education a summary of the petition's content and will invite the institutions to submit their comments and to indicate whether or not they wish and are prepared to offer comparable services. Those in-state institutions that wish to offer comparable services may submit proposals to the Commission within 60 days after the Commission's notification regarding the out-of-state request. Proposals from in-state institutions received within this time period will be forwarded immediately by the Commission to the party requesting instructional services (as well as to the out-of-state institutions).

2. Specifically with respect to a New Jersey high school seeking educational services, the high school shall inform the Commission on Higher Education of its intent to seek an educational program prior to entering into negotiations for college credit bearing courses with an out-of-state institution. The notice shall contain a detailed itemization of the services desired by the high school. After receipt of the notification, the Commission shall provide copies of the notice to all New Jersey institutions of higher education and shall invite these institutions to submit their comments and to indicate both to the Commission and to the high school, within 60 days, whether they wish to try to meet the needs of the high school.

3. The high school shall enter into negotiations with an out-of-state institution only after the high school has notified the Commission on Higher Education which in-state institution, if any, the high school will be dealing with in addition to the proposed out-of-state party.

4. The Commission shall review all full proposals, usually with the assistance of a consultant who is mutually acceptable to the Commission and the institutions. A "needs survey" is not required when an educational institution is invited by an in-state party to provide credit-bearing educational offerings to a specified and *[deliminated]* ***delimited*** constituency. The invitation itself demonstrates that a need exists.

5. (No change.)

6. If the Commission determines, in consultation with LAAB, that an in-state proposal is comparable or superior to the out-of-state proposal, the Commission shall strongly encourage the in-state party requesting instructional services to accept an in-state proposal.

7. The in-state party requesting instructional services shall inform the Commission as to its choice of institution and specify the reasons for the selection.

8. The Executive Director shall make a recommendation concerning the program or course(s) to the New Jersey Commission on Higher Education.

(b) Petitions from out-of-state institutions seeking to offer educational services independently (without invitation) in New Jersey:

1. Upon receipt of petition, the New Jersey Commission on Higher Education shall provide all New Jersey institutions of higher education with a summary of the petition's content and invite the institutions to submit their comments within 60 days.

2. The New Jersey Commission on Higher Education shall review the petition, usually with the assistance of a consultant *[which]* ***who*** is mutually acceptable to the Commission and the institution.

3. The petition and all pertinent materials shall be provided to LAAB for its review.

4. The Executive Director shall make a recommendation concerning the program or course(s) to the Commission on Higher Education.

(a)

COMMISSION ON HIGHER EDUCATION

Community College Personnel Regulations

Readoption and Recodification with Amendments: N.J.A.C. 9:4-1.9 to 9A:7-1.1 and N.J.A.C. 9:4-5 through 7 to 9A:7-2 through 4

Proposed: April 3, 1995 at 27 N.J.R. 1388(a).

Adopted: May 26, 1995 by the Commission on Higher Education, Joseph D. Williams, Chairman.

Filed: May 26, 1995 as R.1995 d.334, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with portions of the proposed amendments not adopted.**

Authority: N.J.S.A. 18A:3B-15 (Chapter 48, P.L. 1994, Section 15).

Effective Date: May 26, 1995, Readoption;
June 19, 1995, Amendments.

Expiration Date: May 26, 1996.

Summary of Public Comments and Agency Responses:

The Association of New Jersey County College Faculties (ANJCCF), the Council of County Colleges (CCC), the New Jersey Education Association (NJEA), and Ocean County College Professor Herb Germann submitted comments.

The NJEA objected to portions of the Commission on Higher Education's proposal to eliminate several existing rules and to amend others, while the CCC supported the Commission's proposal. The Commission has been persuaded, on the basis of public comment, that in three instances

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nonadoption comports better with the spirit of institutional autonomy embodied in the Higher Education Restructuring Act than the originally proposed changes. The agency therefore has not adopted the proposed amendments to the existing rules on teaching load and layoff notification and the proposed deletion of the existing rule on contracts for professional staff, to allow time for the colleges to establish appropriate alternative provisions before State regulation is removed. The specific comments on these and other sections and the agency's responses are summarized below.

COMMENT: Regarding the Commission's proposal to eliminate most provisions of the existing county college rules at N.J.A.C. 9:4-1.9 because they fall within the realm of licensure, the NJEA argued that those rules, which cover topics such as faculty qualifications, personnel records, job descriptions, support staffing, etc., should be retained until new licensure rules are developed, to avoid a gap in regulation.

RESPONSE: A regulatory gap will not occur because the existing licensure rules are being readopted with technical amendments. These technically amended rules will be in place while the Commission, in consultation with the Presidents' Council, develops new licensure rules.

COMMENT: The NJEA said that the Commission's proposal at N.J.A.C. 9:4-1.9(j) to mandate an annual faculty teaching load of 30 hours was contrary to enhancing local autonomy and would hamper institutional flexibility and innovation. The CCC lauded the proposal as preserving quality by ensuring that full-time faculty provide instruction.

RESPONSE: On balance, the Commission believes that the NJEA is correct in its view that the proposal is contrary to the spirit of institutional autonomy embodied in the Higher Education Restructuring Act and inconsistent with the deletion of other personnel rules. The Commission believes that the county colleges can continue to negotiate appropriate faculty workloads without State regulatory assistance and that the current rule, which suggests but does not mandate a standard load, should be retained while individual colleges develop their own policies in this regard.

COMMENT: The NJEA felt that the proposal at N.J.A.C. 9:4-5.7, to align the notification period for layoffs due to programmatic changes with that for layoffs due to fiscal exigency (120 days), does not provide enough time for administrators to analyze relevant trend data. The association noted that the existing rule for such layoffs (210 days notice) helps avoid possible errors due to lack of time, adding that faculty need extra time to find academic employment and that the proposed shortened period would be demoralizing. The CCC supported the proposal, commenting that other rule sections provide for a long deliberative process, up to 15 months or more, preceding a layoff decision.

RESPONSE: A college's decision to reduce or eliminate academic programs rarely occurs without benefit of thorough internal review and evaluation. Moreover, the proposed change does not bar an institution from adopting a longer notification period. Nevertheless, the Commission was persuaded that its proposal to change the current rule is inconsistent with other rule deletions and contrary to the spirit of the Higher Education Restructuring Act, because this issue is more appropriately addressed at the institutional level. The current rule should be retained while individual colleges develop their own layoff notification policies.

COMMENT: The NJEA opposed deleting the requirement at N.J.A.C. 9:4-6.1 for county college trustee boards to prepare 10-year faculty tenure plans. The union viewed the change as inimical to long-range planning. The CCC supported the change because it recognizes trustee board responsibility for planning and workforce projections.

RESPONSE: The proposal replaces the planning mandate with a requirement that trustee boards establish and monitor goals for limiting the proportion of tenured faculty. In addition, the Commission notes that the arbitrary timeframe in the current rule is restrictive and impractical. Also, institutional planning is a prominent feature of the licensing standards and a critical component of Middle States accreditation. The Commission reiterates that the proposed changes comport with the spirit and intent of the restructuring act to reduce State oversight and to place decisionmaking, wherever possible, at the local level.

COMMENT: The NJEA objected to eliminating N.J.A.C. 9:4-6.3, which limits tenure conferral to faculty with a prescribed degree (except in rare circumstances). The union argued that this section should not be repealed until new licensing standards, which will speak more generally to this matter, are adopted. The CCC supported addressing the issue broadly, through licensure, and noted that the restructuring act contemplates local tenure decision making.

RESPONSE: The union is incorrect in believing a regulatory gap will occur if this rule is deleted. The current licensing regulations address this topic in requirements that clearly recognize each college's responsibility to determine its own tenure policies and criteria. Moreover, Middle States accreditation standards also address the matter.

COMMENT: The NJEA raised a concern about eliminating N.J.A.C. 9:4-7.3, a rule that regulates awarding multi-year contracts to professional staff and notifying them of reappointment or nonreappointment. Removing this rule potentially subjects these matters to negotiation; the union preferred retaining the current rule intact. The CCC supported the Commission's proposal, saying that the colleges should not be burdened with additional rules for which licensure provides the only avenue of enforcement.

RESPONSE: The Commission concluded that the current rule should be retained while individual colleges develop their own policies in this regard.

COMMENT: The NJEA opposed repealing the rule at N.J.A.C. 9:4-7.4, which requires county colleges to establish formal career development procedures for faculty and professional staff. The union argued that those rules should be retained until new licensure rules are developed, to avoid a gap in regulation. Professor Germann also spoke to the proposed deletion of N.J.A.C. 9:4-7.4, commenting that the State's career development guidelines had provided an impetus for local campuses in this regard.

RESPONSE: The existing licensure rules, as well as the standards of the Middle States accrediting body, address the topics of faculty evaluation and career/professional development. The Commission believes that additional regulation would be contrary to the spirit of institutional autonomy and unnecessarily redundant.

COMMENT: The ANJCCF generally endorsed the NJEA's position on the Commission's proposals, noting that the NJEA had outlined several of its own concerns regarding the proposed regulatory changes. The ANJCCF also called for involving faculty in developing regulations; Professor Germann's comments echoed this idea.

RESPONSE: The Commission holds that existing campus practices and procedures provide an adequate forum for faculty input.

Executive Order No. 27 Statement

The readoption with amendments and recodification of N.J.A.C. 9:4 are not subject to the Federal exceedance standards because review and adoption of personnel rules by the Commission on Higher Education are not subject to any Federal requirements or standards.

Summary of Technical Changes Upon Adoption:

Typographical errors are corrected at N.J.A.C. 9A:7-2.4, 2.6(b)6 through 8, 2.7, 2.8(c), 3.1, 3.2(a), 4, 4.1, 4.2(b), (c), and (e), and minor corrections at 4.2(d) that were missing from proposal. The subchapter 1 and the first section headings are revised to represent content more accurately, and the subchapter 2 heading is revised for consistency with other titles.

Summary of Substantive Changes Upon Adoption:

The proposed amendments to N.J.A.C. 9:4-1.9(j) and 5.7 and the deletion of N.J.A.C. 9:4-7.3 as originally proposed are not adopted; the existing code text is retained.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 9:4-1.9(j) and (n) and 9:4-5 through 7, pending recodification as N.J.A.C. 9A:7-1.1 and 9A:7-2 through 4.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 7
COMMUNITY COLLEGE PERSONNEL REGULATIONS

SUBCHAPTER 1. *[COMMUNITY COLLEGE PERSONNEL]* ***GENERAL*** RULES

9A:7-1.1 *[Personnel]* ***Teaching load; appointments***

(a) The normal teaching load *[shall]* ***should*** not be less than *[30 student instructional contact hours or the equivalent per academic year. In exceptional cases, the college president may authorize the teaching of summer semester courses as part of the normal teaching load where course scheduling requires that the courses be offered during the summer semester]* ***the load in effect at the State colleges***.

(b) All personnel appointments in a county community college shall be made upon the written recommendation of the president to the board of trustees with the exceptions of the presidency itself, the board attorney,

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and an external auditor or auditing firm. All personnel appointments must be approved by the board of trustees.

SUBCHAPTER 2. *[COUNTY]* ***COMMUNITY*** COLLEGE REDUCTION IN FORCE POLICIES

Recodify existing 9:4-5.1 through 9:4-5.3 as 9A:7-2.1 through 9A:7-2.3 (No change in text.)

9A:7-2.4 Consultation with college community

The president shall consult with the college community in developing the plan and recommendations to ***be*** presented to the board of trustees. Representatives of the college community shall, upon request, be provided with class enrollment *[data,]* and financial data in a timely manner pursuant to the Right to Know Law (N.J.S.A. 47:1A-1). Nothing herein shall require a college to prepare such information in a format not routinely used by the college. Representatives of the college community may present alternative plans to modify or avoid the reduction in force to the college president, provided that such plans are submitted within the time permitted the president to submit a plan to the trustees. The president shall forward any suggested alternative plans to the board of trustees along with his or her own recommendations.

Recodify existing 9:4-5.5 as 9A:7-2.5 (No change in text.)

9A:7-2.6 Review of recommendations

(a) (No change.)

(b) If such recommendations as noted in (a) above include the layoff of employees, the board shall be guided by the following principles:

1.-5. (No change.)

6. Where a reduction in force is caused by a natural diminution in enrollment and a partial academic teaching load is available for which a *[laid off]* ***laid-off*** faculty member is qualified, then such a faculty member shall be given the first opportunity to teach such a partial load, at a salary proportionate to his or her full-time compensation.

7. The use of adjuncts or full-time faculty on overload to assume the equivalent of the full-time academic load in the discipline of faculty who are to be laid off shall not be permitted. Nothing herein shall prevent a college from using adjunct or overload faculty if no *[laid off]* ***laid-off*** faculty are qualified to teach the scheduled courses, in the academic judgement of the president.

8. The qualifications of *[laid off]* ***laid-off*** faculty members shall be reviewed by the president of the college. If in the academic judgment of the president the faculty member is qualified to teach in another discipline, and a vacancy exists, or courses are being taught by an adjunct faculty member or by another full-time faculty member on an overload assignment, then the *[laid off]* ***laid-off*** faculty member shall be employed to fill the vacancy or to assume the courses taught by the adjunct or by the full-time faculty member on an overload basis.

9A:7-2.7 Notice requirements; time period

Upon the board's determining the areas that may be affected by the layoff, it shall give notice to all individuals subject to the proposed layoff two weeks before the formal board action on said layoffs. After formal board action on said layoff, the board of trustees shall notify each employee who is to be laid-off of such fact 120 days before the date of layoff*[s]* ***for layoffs due to fiscal crisis and 210 days before the date of layoff for layoffs due to a natural diminution in the number of students in a program or a reduction in programs****. Appeals of layoffs ***due to fiscal exigency*** under this section shall be given prompt consideration if requested.

9A:7-2.8 Reemployment lists; generally

(a) (No change.)

(b) The college shall not fill a vacancy in any faculty position in any layoff unit in which a layoff has occurred without first making a written offer of reemployment to those persons on the academic reemployment list whom the president believes, as a result of his academic judgment confirmed by the board of trustees, are qualified to fill the position.

(c) The college president shall not fill a vacancy in an administrative position in any layoff unit in which a *[layof]* ***layoff*** has occurred without first making a written offer of reemployment to the person on the administrative reemployment list whom the president***,*** in his administrative judgment confirmed by the board of trustees, believes is most qualified for the position.

(d)-(f) (No change.)

9A:7-2.9 Reemployment lists; time period

(a) Faculty who are tenured on the date of layoff shall remain on the reemployment lists for a period of five years from the date of layoff.

(b)-(d) (No change.)

Recodify existing 9:4-5.10 and 9:4-5.11 as 9A:7-2.10 and 9A:7-2.11. (No change in text.)

SUBCHAPTER 3. TENURE POLICIES

9A:7-3.1 *[monitoring*] ***Monitoring*** proportion of tenured faculty

[(a)] In order to maintain the flexibility of the institution to respond to the changing educational needs of future generations of students, each college board of trustees shall take appropriate steps to achieve a future balance of the proportion of faculty utlimately tenured. The board of trustees shall annually monitor the projected proportion of tenured faculty and the progress being made to achieve the institutional goal of limiting the proportion of tenured faculty.

9A:7-3.2 Establishment of internal policies

(a) Each community college board of trustees shall establish internal policies which indicate *[either]* that it will impose ***either*** specific restrictions or more intensive and rigorous review procedures for any reappointment conferring tenure which brings the proportion of individuals in a department (or other major academic sub-unit) or in the college as a whole above the level deemed necessary by the board of trustees to maintain an appropriate balance between tenured and non-tenured faculty.

(b) Reappointments conferring tenure which raise the proportion of tenured faculty above the level deemed appropriate by the board of trustees shall be made only when judged by the college board of trustees as being in the best interests of the college.

Recodify existing 9:4-6.4 and 9:4-6.5 as 9A:7-3.3 and 9A:7-3.4 (No change in text.)

9A:7-3.5 Evaluation procedures

(a)-(b) (No change.)

(c) These evaluations, which should include student input, should comprehend such factors as continued teaching competence, professional preparation, and attainments that are directly related to teaching or administrative assignments; contributions to campus life beyond formal, assigned instructional activity; and significant research, scholarly, or community activity.

SUBCHAPTER 4. PROFESSIONAL EMPLOYEE*[S]* POLICIES

9A:7-4.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Professional personnel" means individuals serving in positions which at minimum require the individual to hold a *[bachelors]* ***bachelor's*** degree or its equivalent.

. . .

9A:7-4.2 Academic rank for nonteaching personnel

(a) "Faculty member" means any full-time member of the teaching staff appointed with academic rank. Pursuant to rules promulgated by the New Jersey Commission on Higher Education, other full-time professional personnel shall be considered faculty members if they concurrently hold academic rank.

(b) Eligibility for concurrent academic rank for nonteaching professional personnel in the county colleges shall be limited to professional librarians who meet qualifications for rank***,*** professional staff members engaged in student counseling related to an academic program who meet all qualifications for rank, and to other professional personnel as set forth in (h) below. Any nonteaching professional personnel granted concurrent academic rank before July 31, 1974 shall retain such academic rank while employed by the college.

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(c) Concurrent academic rank for nonteaching professional personnel in the community colleges may *[only]* be granted ***only*** by affirmative action of the college board of trustees, and shall be limited to those categories of personnel identified in (b) ***above*** and (h) *[above]* ***below***.

(d) Persons receiving academic rank concurrent with a professional appointment shall be designated by their professional title (as reflected in their payroll title) and their academic rank, as for example "head librarian and professor of library services" or "instructor, student counseling center and director of transfer and placement". The implementation of these regulations shall have no effect upon the salary and working schedules for such individuals. Such individuals will receive yearly appointments to both their professional position***s*** and (until tenure is earned) their academic rank***s***. Appointment and reappointment to professional positions may be made by the college board of trustees on the recommendation of the president. Appointment and reappointment to concurrent academic rank may be made by the board of trustees on the recommendation of the president.

(e) If tenure is awarded in a concurrent academic rank to an individual, appointments on an annual basis to his or her professional position may continue to be made by the board of trustees as indicated in (f) *[above]* ***below***.

(f) A college board of trustees shall have the authority to reassign any nonteaching professional employee with tenure in a concurrent academic rank to any professional position in the department or unit in which tenure is held. For example, a head librarian tenured as professor of library services may be reassigned to any professional library position or a dean tenured as professor of English may be reassigned to responsibilities in the English department.

(g)-(i) (No change.)

***9A:7-4.3 Contracts for professional staff (nonfaculty)**

(a) Professional staff employees not holding faculty rank may be appointed by a board of trustees for one-year terms for five consecutive academic years. For the purposes of this section, the academic year shall be defined as July 1 to June 30. Eligible professional staff employees whose initial agreement is after July 1, but before October 1, shall be given a term from the date of appointment to June 30 of the following year, and this appointment shall be considered as one full academic year of service for the purpose of this regulation. Eligible professional staff employees whose initial appointment is after October 1 shall be given an appointment until June 30 of the following year, but this appointment shall not be considered as a full academic year of service for the purpose of this section. Professional staff serving under such initial one-year contracts shall be notified of reappointment or nonreappointment to a succeeding one-year contract by March 15 of each academic year.

(b) A professional staff employee shall be eligible for, but not entitled to, reappointment to a multi-year term of two to five years, as well as reappointment to a one-year term, after such employee's fifth consecutive full academic year of service. The college shall notify the professional staff employee by December 15 of the fifth consecutive contract year of the determination to reappoint or nonreappoint and, in the instance of reappointment, of the duration of said reappointment. During the period of any multi-term contract after five consecutive years of service, employees shall be subjected to dismissal only in the manner prescribed by N.J.S.A. 18A:6-18.

(c) Subsequent to the fifth consecutive contract year professional staff employees who are appointed to one-year contracts after five consecutive years of service shall be notified of reappointment or nonreappointment to a succeeding contract by December 15 of each academic year.

(d) Professional staff employees who are appointed to multi-year contracts shall be notified of appointment or nonreappointment to a succeeding contract one year before the expiration of such contracts. Failure to so notify an employee shall entitle such employee to reappointment for a one-year term.

(e) Any professional staff employee, whether serving under an annual contract or a multi-year contract, who is not notified of reappointment in accordance with the applicable provisions set forth above in this section shall be entitled to reappointment for an additional one-year term.

(f) A professional staff employee who has served longer than five consecutive academic years and whose contract, whether for a one-year term or a multi-year term, is due to expire at the end of the academic year may, in accordance with the provisions of this section, be reappointed to a one-year term, a multi-year term, or not reappointed, regardless of the duration of his or her current contract.

(g) Professional staff members serving under a multi-year contract may be assigned by the president to any professional position within their competence during the term of the contract, but their salary may not be reduced during the duration of the contract below that which they would have received had they continued in their original position, and they may be dismissed from the college during the term of the contract only for cause consistent with appropriate statutory provisions.

(h) The board of each college that offers multi-year contracts shall establish a formal procedure for considering and approving the offering of multi-year contracts and for determining whether the length of such contracts shall be two, four, or five years. This procedure should encompass a thorough review of all personnel records, including the reports of regular, systematic, and formal evaluations conducted during the employment of the individual, as suggested in (e) above.*

(a)

COMMISSION ON HIGHER EDUCATION

State College Personnel

Adopted Repeal: N.J.A.C. 9:6 (except N.J.A.C. 9:6-3.1, 3.5, 3.6, 4.5, 4.6 and 4.7) and 9:6A-5, 6 and 7

Readoption and Recodification: N.J.A.C. 9:6-3.1, 3.5, 3.6, 4.5, 4.6 and 4.7 as 9A:6-5.1, 5.2, 5.3, 6.1, 6.2 and 6.3

Readoption and Recodification with Amendments: N.J.A.C. 9:6A to 9A:6

Proposed: April 3, 1995 at 27 N.J.R. 1395(a) and 1392(a) (as to readoption of N.J.A.C. 9:6-3 and 4).

Adopted: May 26, 1995 by the Commission on Higher Education, Joseph D. Williams, Chair.

Filed: May 26, 1995 as R.1995 d.335, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with portions of the proposed repeal not adopted.**

Authority: N.J.S.A. 18A:3B-15 (P.L. 1994, Chapter 48, Section 15).

Effective Date: May 26, 1995, Readoption;
June 19, 1995, Amendments and Repeal.

Expiration Date: May 26, 1996.

The Council of New Jersey State College Locals (AFT), the New Jersey State College Governing Boards Association (GBA), and the William Paterson College of New Jersey Faculty Senate (WPCFS) submitted comments.

The Commission proposed repealing some rules and readopting others with substantive amendments and a one-year sunset provision. The rationale for this proposal was to conform with the intent of the Higher Education Restructuring Act, which sought less State regulation and greater institutional autonomy, while maintaining regulatory coverage when necessary until the colleges developed appropriate alternatives.

The Commission proposed for repeal rules that were either redundant or inappropriate for one or more of the following reasons: statute already addresses (and hence governs); general licensing standards, which apply to all colleges and universities, cover the regulated area; the State colleges and teaching university should not be treated differently (the other senior public

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institutions are not subject to such State regulation of personnel matters); consistent with restructuring, individual boards of trustees, not the State, should have control of and authority over areas that are considered "managerial prerogative"; consistent with autonomy, conditions of managerial employment should rest with individual boards of trustees and should not be defined by the State; and collective bargaining between institutions and the bargaining unit, rather than State regulation, should determine the treatment of negotiable items (some of which are already incorporated into the collective bargaining agreement).

The Commission continues to believe in eliminating redundant or inappropriate State regulation. Nevertheless, the agency has not adopted the repeal of six sections (N.J.A.C. 9:6-3.1, 3.5, 3.6, and 4.5 through 4.7) as originally proposed because it may be disruptive if the institutions do not first have substitute provisions in place, either through negotiation or adoption as policies. The Commission instead has readopted those six rules for one year (with technical amendments) to allow time for the institutions to develop alternatives, as they are doing for the other rules originally proposed for one-year readoption.

Summary of Public Comments and Agency Responses:

COMMENT: The GBA concurred with the Commission's proposal, in particular for recognizing the rightful authority and responsibility of local trustee boards and for including a one-year sunset provision for the readopted rules.

RESPONSE: The Commission appreciates the GBA's support.

COMMENT: The AFT urged the Commission not to adopt the proposed repeal of six rules: N.J.A.C. 9:6-3.1 (Academic freedom), 3.5 (Qualifications for rank), 3.6 (Criteria for promotion), 4.5 (Academic rank for nonteaching personnel), 4.6 (Nonteaching professionals), and 4.7 (Contracts for professional staff (Nonfaculty)). The union viewed their repeal as premature and potentially harmful to affected employees while not being beneficial to the colleges or the State. The AFT contended that these sections establish important employee rights and that they form part of the context of collective bargaining for the current contract with State college faculty, as well as for the successor agreement now being negotiated. The union also argued that until legislation is enacted to change the bargaining structure, current law remains in effect, and regulations must be consistent with statute. The WPCFS opposed campus-level decisions on the matters addressed by those six sections and called for preserving those rules to give them the force of law.

RESPONSE: The Commission believes that repeal of the above-noted sections should be postponed to allow time for the institutions to put substitute provisions in place. The Commission continues to believe that responsibility for the matters that the rules address rightly rests with the institutions. The agency disagrees with the AFT's other contentions regarding those rules. The existence of State regulations in these areas is not tied to centralized bargaining, and regulations, whether State or institutional, must of course be consistent with statute.

COMMENT: Regarding N.J.A.C. 9:6A-1 through 4, which pertain to the State College Classification and Compensation Plans, the AFT argued for indefinite extension. The union said that amending or repealing these rules should not occur until "after the direction in which collective bargaining will evolve in the AFT bargaining unit has become clear" (referring to the Commission's forthcoming recommendations to the Governor and Legislature on collective bargaining).

RESPONSE: The Commission disagrees with the AFT's position on the appropriate time to change these rules. The regulations are not tied to the structure of collective bargaining, and a longer retention period is inconsistent with the spirit of the restructuring act.

Executive Order No. 27 Statement

The repeals and amendments are not subject to the Federal exceedance standards because review and adoption of personnel and student trustee policy rules and of the State college personnel system rules by the Commission on Higher Education are not subject to any Federal requirements or standards.

Summary of Changes Upon Adoption:

Typographical errors at N.J.A.C. 9A:6-2.1 and 9A:6-5.1(a) (formerly 9:6-3.6(a)) are corrected.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 9:6A and 9:6-3.1, 3.5, 3.6, 4.5, 4.6 and 4.7, pending recodification.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

9A:6-1.1 Purpose

The purpose of this chapter is to prescribe rules and procedures to provide an effective and efficient personnel system for employees in the State colleges unit and to ensure that employees are treated fairly and impartially.

9A:6-1.2 Compliance

All State colleges and their full- or part-time employees in the State colleges unit, including but not limited to all faculty, librarians, and nonteaching professional staff shall comply with these rules provided, however, that career service employees covered by the provisions of Title 11A, Civil Service, New Jersey Statutes, and all employees not included in the State colleges unit shall not be subject to these rules.

9A:6-1.3 (No change in text.)

9A:6-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings and are defined solely for the purposes of this chapter, unless the context clearly indicates otherwise:

. . .

"Commission" means the New Jersey Commission on Higher Education, created by the Higher Education Restructuring Act of 1994, N.J.S.A. *[18A:38]* ***18A:3B*** et seq.

"Employee" means all employees at a state college included in the State colleges unit.

"Executive Director" means the Executive Director of the Commission on Higher Education.

. . .

"Part-time employee" means an employee in the State colleges unit who is employed on less than a full-time basis.

. . .

"Regular title" means a title within the State College Classification Plan which has a corresponding salary range established by the Commission on Higher Education and carries eligibility for holiday and other leave benefits.

. . .

"State College Classification Plan" means the comprehensive system of titles, title series, and specifications for positions in the State colleges unit at the state colleges.

9A:6-3.1 Classification of titles

(a) The Commission on Higher Education shall establish and maintain a State College Classification Plan for all employees in the State colleges unit at the State colleges, as defined in N.J.A.C. 9A:6-2.1, which shall consist of:

1. (No change.)

2. Specifications for each title which shall include:

i.-iv. (No change.)

v. Assignment to a salary range;

vi. Such other information as may be necessary.

(b) The college shall assign each position to an appropriate title based on an analysis of the work to be performed and consistent with the specification for that title.

1. No employee shall be appointed or employed under a title not appropriate to the duties to be performed nor be required to routinely perform duties unrelated to the assigned title.

2. Should the employee disagree with the classification of a position, an appeal may be made in accordance with N.J.A.C. 9A:6-3.5.

(c) (No change.)

9A:6-3.2 Administration of State College Classification Plan

(a) The Executive Director shall enforce and administer the State College Classification Plan approved by the Commission on Higher Education and shall:

1. (No change.)

2. With the consent of the Commission on Higher Education approve:

i.-v. (No change.)

3. (No change.)

4. Recommend to the Commission on Higher Education any other changes deemed necessary to accurately reflect current conditions.

(b) (No change.)

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9A:6-3.3 Requests for changes within the State College Classification Plan

(a) State colleges proposing changes within the State College Classification Plan shall initiate requests by letter from the president of the college, or his or her designee, addressed to the Executive Director, setting forth the nature of the requested change and appropriate justification.

(b) (No change.)

(c) Upon receipt of a letter requesting a substantive change within the State College Classification Plan, the Executive Director shall submit all pertinent information to the State College Classification Advisory Board.

(d) The State College Classification Advisory Board shall, within 60 calendar days, make a written recommendation to the Executive Director.

(e) At either of the succeeding two meetings of the Commission on Higher Education after receipt of the recommendation from the State College Classification Advisory Board, the Executive Director shall present a recommendation to the Commission on Higher Education.

(f) Nothing in this section shall preclude the Executive Director from utilizing the services of an outside consultant(s) to assist in evaluating such requests.

1. If a consultant is utilized the Executive Director shall refer any such matters to the consultant(s) within 30 days of the recommendation from the State College Classification Advisory Board.

2. The time limit set forth in (e) above shall run from the time the Executive Director receives the report from the consultant.

9A:6-3.4 Classification and reclassification of positions

(a) (No change in text.)

(b) When the college, an affected employee, or the recognized negotiations agent claims, in writing, that the assigned duties and responsibilities of a position have changed to the extent that they are no longer similar to the duties and responsibilities of other positions in the same title, and that the title is no longer appropriate, the college shall after review of the claim:

1. (No change.)

2. Recommend to the Commission on Higher Education that a new title be established to which the position shall be reclassified; or

3.-4. (No change.)

(c) (No change.)

(d) (No change in text.)

9A:6-3.5 Reclassification appeal procedures

(a)-(e) (No change.)

9A:6-3.6 Title reevaluation requests

(a) (No change.)

(b) The college, an affected employee, or the recognized negotiations agent may request a reevaluation, which shall be submitted in writing to the Executive Director.

1. At least two weeks prior to the submission of such a request to the Executive Director, notice of the request shall be provided to the president of the college.

(c) The Executive Director shall refer a request to the State College Classification Advisory Board for a recommendation. The recommendation shall be issued to the Executive Director within 60 calendar days of receipt of the request by the State College Classification Advisory Board.

(d) The Commission may render a decision based on the written record or appoint an independent compensation consultant which appointment shall be made within 30 days.

1. If the Executive Director appoints a consultant to conduct a review of the request, all parties shall be advised of the review date and shall present their arguments before the consultant. An employee requesting a reevaluation may be heard personally or be represented by counsel or the employee's recognized negotiations agent.

2. The consultant shall submit a report and recommendation to the Executive Director within 30 calendar days after the review.

3. The report and recommendation shall be sent to all parties. Exceptions may be filed with the Executive Director within 15 calendar days of receipt of the report and recommendation. If exceptions are filed, cross-exceptions may be filed within five days of receipt of the exceptions. Exceptions and cross-exceptions shall be served on all parties.

(f) If the Executive Director determines that the title should be reevaluated, he or she shall bring a recommendation to the Commission on Higher Education at one of its next two succeeding meetings following the receipt of the recommendation from the State College Classification Advisory Board or any consultant(s) if utilized.

9A:6-4.1 State College Compensation Plan

(a) The Commission on Higher Education shall establish and publish the State College Compensation Plan for employees in the State colleges unit, which shall be the official plan for compensating all employees in regular titles in the state colleges unit.

(b) (No change in text.)

***SUBCHAPTER 5. ACADEMIC PERSONNEL POLICIES**

9A:6-5.1 Academic freedom

(a) Academic freedom derives from the nature of the quest for knowledge. It is essential to the full search for truth and its free exposition, applies to both teaching and research, and shall not be abridged or abused. Academic freedom does not relieve the employee of those duties and obligations which are inherent in the employer-employee relationship.

(b) Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it responsibilities correlative with rights.

1. Employees are entitled to full freedom in research and in the publication of results.

2. An employee is entitled to freedom in the classroom in discussing his or her subject.

3. Employees are citizens and members of a learned profession. When the employee speaks or writes as a citizen, he or she is free from institutional censorship or discipline, but should not represent himself as a spokesperson for the institution.

(c) Closely related to the matter of academic freedom is meaningful and systematic involvement of faculty in the governance of the college. Each board of trustees shall establish formal means to assure that faculty views are taken into account regarding such matters as academic policy, curriculum development, faculty, and other academic personnel decisions.

9A:6-5.2 Qualifications for rank

(a) The academic attainment level and professional experience requirements for college faculty academic are set forth below. Conditions concerning promotion or appointment to such rank are defined in N.J.A.C. 9A:6-5.3 (Criteria for promotions):

1. Instructor: An earned master's degree or its equivalent from an academic institution in an appropriate field of study and enrollment in and actively pursuing an accredited terminal degree program in an appropriate field of study.

2. Assistant Professor: An earned doctorate or other appropriate terminal degree or its equivalent from an accredited institution in an appropriate field of study or completion of all requirements for the doctorate in an accredited institution except for the dissertation. For persons hired after January 1, 1986 who do not hold the appropriate terminal degree or its equivalent, no reappointment shall be made to the fourth year unless the board of trustees of the college determines that for rare and exceptional reasons reappointment is necessary to support the mission of the college.

3. Associate Professor: An earned doctorate or other appropriate terminal degree from an accredited institution in an appropriate field of study and five years of professional experience. Evidence of excellence in teaching, scholarly achievement, and service beyond the level of accomplishment of those holding the assistant professor rank.

4. Professor: An earned doctorate or other appropriate terminal degree from an accredited institution in an appropriate field of study and eight years of professional experience. Evidence of excellence in

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teaching, scholarly achievement, and service beyond the level of accomplishment of those holding the associate professor rank.

5. Distinguished Professor: As established by the board of trustees of each college, this rank is intended to provide for the individual who has demonstrated outstanding scholarship, teaching ability, or distinction in a field.

(b) The Commission on Higher Education recognizes that on rare occasions individuals may present qualification as to education and experience that their peers will recommend to the board of trustees to be the equivalent of the above qualifications although not corresponding to them to the letter. The requirement of an earned doctorate or other appropriate degree or its equivalent for promotion to the rank of Assistant Professor shall not apply to faculty members employed in the colleges before February 22, 1974.

(c) The academic attainment level and professional experience requirements for librarians are as follows:

1. Librarian III: A master's degree in Library Science or its historical antecedent from a then-ALA-accredited library school. Previous professional library experience is desirable, but not required.

2. Librarian II: A master's degree in Library Science or its historical antecedent from a then-ALA-accredited library school and three years' professional library experience. A second master's degree in another subject area and/or a reading competence in one foreign language is desirable, but not required.

3. Librarian I: A master's degree in Library Science or its historical antecedent from a then-ALA-accredited library school, a second master's degree in another subject area or ABD status in an approved doctoral program, and five years' professional library experience, with demonstrated and/or potential administrative and coordinating ability. Reading competence in one foreign language is desirable, but not required. A minimum of five additional years' professional library experience may be considered in substitution for the second master's degree or ABD status in an approved doctoral program, depending upon the quality of the experience.

4. The requirement for a master's degree in Library Science or its historical antecedent from a then-ALA-accredited library school may be met by substituting a master's degree in a related field relevant to an individual's duties. The Library Personnel Committee, where appropriate, may consider and make recommendations on whether such other master's degrees should be so substituted.

(d) The academic attainment level and professional experience requirements for the A. Harry Moore School Faculty are as follows:

1. Demonstration Teacher: New Jersey Certification in Special Education and a master's degree and two years' teaching experience in special education; or a bachelor's degree and five years' teaching experience in special education; or a master's degree and two years' teaching experience in a specialized vocational area; or a master's degree and two years' appropriate experience in a specialized vocational area; or a bachelor's degree and five years' teaching experience in a specialized vocational area; or possession of appropriate credentials in such fields as, but not limited to, occupational therapy, physical therapy and learning disabilities, and a master's degree and five years' experience in an appropriate field.

2. Teacher: New Jersey Certification in Special Education and a bachelor's degree and proficiency in a specialized vocational area or possession of appropriate credentials in such fields as, but not limited to, occupational therapy, physical therapy, and learning disabilities.

9A:6-5.3 Criteria for promotions

(a) Criteria for granting academic rank are set forth in N.J.A.C. 9A:6-5.2 (Qualifications for rank). These criteria are important indicators of academic achievement. Such achievement is usually accompanied by intellectual growth and maturity. Most important, the academic achievement record is a reasonable objective measure. While this objective measure should be given weight in promotion decisions, it should not necessarily be the dominant factor. Decisions about promotions shall be governed by at least three broad and interrelated factors:

1. Effective teaching,

2. Scholarly achievement, and

3. Contributions to college and community.

(b) Regarding librarians, the major criteria upon which the Personnel Committee will make promotion recommendations are as follows:

1. High quality of performance in the area of assigned responsibility;

2. Professional contributions and scholarly activity;

3. Additional academic preparation as evidenced by advanced degree or other relevant course work;

4. Administrative and/or coordinating ability; and

5. Participation in library, college, and community affairs.

SUBCHAPTER 6. NONTEACHING PROFESSIONAL STAFF POLICIES

9A:6-6.1 Academic rank for nonteaching personnel

(a) Professional staff who meet appropriate qualification requirements for academic rank and serve as presidents for academic affairs, and academic deans are eligible for concurrent academic rank. Nothing shall be construed herein to require a concurrent academic rank appointment by a board trustees, to an eligible professional staff member.

(b) Librarians who meet appropriate qualification requirements and hold State College Classification Plan titles of librarian I, librarian II, and librarian III are eligible for concurrent academic rank. Concurrent academic rank equivalencies for librarians I, II, and III shall be the following:

State College Classification Plan Title—Concurrent Academic Rank

1. Librarian I—Assistant professor in the library,

2. Librarian II—Assistant professor in the library,

3. Librarian III—Instructor in the library.

(c) Professional staff holding concurrent rank appointments may be reassigned by a president to any college position within his or her area of professional competence and appropriate qualifications for rank.

(d) Employees holding concurrent academic rank appointments shall not be eligible for multi-year contracts or administrative appointment for a term of more than one year, although reappointments may be made without limit.

(e) Under no circumstances may tenure be earned in any administrative position.

9A:6-6.2 Nonteaching professional

Those members of the professional staff who are not eligible for concurrent academic rank or continuation of concurrent academic rank under the provisions of these regulations shall be eligible for multi-year contracts.

9A:6-6.3 Contracts for professional staff (nonfaculty)

(a) Members of the professional staff not holding faculty rank may be appointed for one-year terms concurrent with the academic year. After completion of five years of probationary service, such employees may be eligible for a multi-year contract. For professional staff who are members of the State college negotiating unit, each initial appointment to a multi-year contract shall be for three academic years in length. Subsequent reappointments shall be for four years, and then five years. All subsequent contract shall be for five academic years in length.

(b) For the purposes of this section the academic year shall be from July 1 to June 30. Contracts for professional staff members shall be concurrent with the academic year. In order for the initial term of employment to qualify as a full academic year for purposes of the multi-year contract probationary period, employment under the contract must begin no later than December 31.

(c) Eligible professional staff members must be notified by the president no later than December 15 in their fifth academic year of service of their reappointment or nonreappointment to a contract of from two to five academic years in length.

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(d) Notwithstanding (a) above, professional staff members serving under multi-year contracts who are promoted in title shall, at minimum, serve one year in his or her new position before becoming eligible for consideration of a multi-year contract in that new position.

(e) Professional staff members serving under a multi-year contract may be assigned by the president to any professional position within their area of competence and qualifications during the term of the contract, but their salary may not be reduced during the duration of the contract below that which they would have received had they continued in their original position, and they may be dismissed from the college during the term of the contract only for cause consistent with appropriate statutory provisions.

(f) Prior to the implementation of these guidelines, the board of each college shall establish a formal procedure for considering and approving the offering of multi-year contracts. This procedure should, at minimum, encompass a thorough review of all personnel records including the reports of regular, systematic, and formal evaluations conducted during the employment of the individual.

INSURANCE

(a)

DIVISION OF ACTUARIAL SERVICES

Individual Health Insurance Rate Filings
Adopted Amendment: N.J.A.C. 11:4-18.6

Proposed: April 17, 1995 at 27 N.J.R. 1513(a).

Adopted: May 22, 1995 by Andrew J. Karpinski, Commissioner, Department of Insurance.

Filed: May 26, 1995 as R.1995 d.327, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17B:26-44.6.

Effective Date: June 19, 1995.

Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required for the subject amendment is not liable to Federal requirements or standards.

Full text of the adoption follows:

11:4-18.6 Annual review of calendar year experience data on filed individual health insurance policy forms

(a) (No change.)

(b) (No change in text.)

(b)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Small Employer Health Benefits Program Policy Forms; Compliance and Variability Rider
Adopted New Rules: N.J.A.C. 11:21-4.4 and Exhibit DD

Proposed: February 6, 1995 at 27 N.J.R. 439(a).

Adopted: May 22, 1995 by the New Jersey Small Employer Health Benefits Program Board, Kevin O'Leary, Executive Director.

Filed: May 26, 1995 as R.1995 d.312, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17B:27A-17 et seq., as amended by N.J.S.A. 17B:27A-51, P.L. 1994, c.11 and P.L. 1994, c.97.

Effective Date: June 19, 1995.

Expiration Date: October 15, 1998.

Summary of Public Comments and Agency Responses:

COMMENT: The Prudential Insurance Company described the proposed new rule as a "positive step," but indicated that the proposed 12 month limitation on the use of the rider when used as a "compliance" rider rather than as a "variability" rider was unduly burdensome. Specifically, the commenter indicated that the 12-month limitation would cause carriers to print in smaller volume and thus increase printing costs and increase the danger that carriers might run out of supplies. The commenter suggested that the Board alter the rule to permit greater flexibility for longer use of the rider, and toward that end, suggested the addition of a list of the situations where the rider could be used indefinitely.

RESPONSE: The SEH Board agrees with the commenter that the 12 month limitation on the use of the compliance and variability rider when used as a compliance rider is burdensome and may not serve a function which would warrant the burden and cost to carriers. As a result, the SEH Board has amended the proposal to remove the 12 month restriction on the use of the rider when used to comply with SEH Board mandated changes. The Board considered setting forth a list of situations where the rider could be used indefinitely, but concluded that such a list would be difficult to develop at this time. Nevertheless, the Board believes that some limitation on the continued use of compliance riders is necessary to avoid confusion to consumers. The Board concluded that, as new changes to the policy forms are promulgated by the Board, it will announce in future proposals, adoptions, and bulletins addressing such changes, whether and how long carriers may use a compliance rider to effectuate Board initiated changes.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because rider filings in the New Jersey small employer health benefits market are dictated by N.J.S.A. 17B:27A-17 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows (deletions from proposal indicated in cursive brackets with asterisks *{this}*):

11:21-4.4 Compliance and variability rider

(a) Notwithstanding the requirements of N.J.A.C. 11:21-4.1, members may incorporate regulatory changes required to be made to the standard policy forms, standard HMO contract, certificates, and evidence of coverage for Plans A, B, C, D, E and HMO and for the standard riders promulgated by the Board, through the use of the Compliance and Variability Rider as set forth as Exhibit DD of the Appendix, incorporated herein by reference, subject to the following:

1. The Compliance and Variability Rider may be issued by members to incorporate changes to the standard policy forms, HMO contract, certificates, evidence of coverage, or standard riders promulgated by the Board*{, for one calendar year after the date the Board has promulgated such changes}*. Nothing contained in this section shall prevent a member from issuing a standard policy form, HMO contract, certificates, evidence of coverage or standard rider which has incorporated Board

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promulgated changes *{within one year of the Board's promulgation of such changes}*.

{2. No member shall issue a Compliance and Variability Rider to incorporate changes to the standard policy forms, HMO contract, certificates, evidence of coverage, or standard riders promulgated by the Board more than one year after the date the Board has promulgated such changes.}

(b) Notwithstanding the requirements of N.J.A.C. 11:21-4.1, members may make any changes to the standard policy forms, standard HMO contract, certificates, and evidence of coverage for Plans A, B, C, D, E and HMO and for the standard riders promulgated by the Board consistent with the variability as explained in Exhibit K to the chapter Appendix through the use of the Compliance and Variability Rider as set forth as Exhibit DD of the Appendix.

(c) Members may use the Compliance and Variability Rider only as permitted by (a) and (b) above. In no event shall the Compliance and Variability Rider be used in lieu of optional benefit riders which riders are subject to filing requirements set forth in N.J.A.C. 11:21-3.2(d).

Exhibit DD

[Carrier]

AMENDMENT

[Policyholder]

Group [Policy] No.

Effective Date:

[

]

This Amendment is part of the [Policy]. Except as stated above, nothing in this Amendment changes or affects any other terms of the [Policy].

[Carrier shall insert its standard amendment closure and signature blocks.]

LABOR

(a)

DIVISION OF UNEMPLOYMENT INSURANCE AND DISABILITY INSURANCE FINANCING

Definitions Used by Employment Security Agency and Special Employment Relationships

Readoption with Amendments: N.J.A.C. 12:19

Proposed: April 17, 1995 at 27 N.J.R. 1518(a).

Adopted: May 26, 1995 by Peter J. Calderone, Commissioner, Department of Labor.

Filed: May 26, 1995 as R.1995 d.318, **without change.**

Authority: N.J.S.A. 43:21-1 et seq.

Effective Date: May 26, 1995, Readoption
June 19, 1995, Amendments.

Expiration Date: May 26, 2000.

Summary of Hearing Officer's Report and Agency Responses:

A public hearing on the proposed readoption with amendments was held on May 10, 1995, at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdré L. Webster, Regulatory Officer, was available to preside at the hearing and to receive testimony. However, no one appeared to give testimony on the proposed readoption with amendments. As a result, the hearing officer recommended that the rules be adopted without change. The public hearing record may be reviewed by contacting Deirdré L. Webster, Regulatory Officer, Office of Regulatory Services, Office of the Commissioner, Department of Labor, CN 110, Trenton, New Jersey 08625-0110.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

The readoption with amendments does not exceed standards or requirements imposed by Federal law. These rules set forth the definitions used throughout N.J.A.C. 12:16 through 12:19 to implement the New Jersey Unemployment Compensation and Temporary Disability Laws, N.J.S.A. 43:21-1 et seq. As a result, an explanation or analysis of the readoption with amendments pursuant to Executive Order No. 27(1994) is not required.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:19.

Full text of the adopted amendments follows:

CHAPTER 19
DEFINITIONS USED BY
EMPLOYMENT SECURITY AGENCY AND
SPECIAL EMPLOYMENT RELATIONSHIPS

12:19-1.1 Purpose

The purpose of this chapter is to set forth the definitions to be used throughout N.J.A.C. 12:16 through 12:19, and to provide examples illustrating the definitions and, in some instances, exceptions to the definitions.

12:19-1.2 Definitions

The following words and terms, when used throughout N.J.A.C. 12:16 through 12:19, shall have the following meanings unless the context clearly indicates otherwise:

. . .

"Base of operations" means the place or fixed center of more or less permanent nature from which the employee starts work and customarily returns to in order to accomplish any of the following:

1. Receive instructions from the employer;
2. Receive instructions from customers or other persons;
3. Replenish stocks and materials;
4. Repair equipment; or
5. Perform any other functions necessary to the exercise of a particular trade or business.

Examples: An individual reports to a New Jersey site daily to stock his or her repair truck and receive assignments for that day. The individual performs services both in New Jersey and other states. This individual must be reported by the employer to New Jersey as his or her base of operations is in New Jersey and some services are performed in New Jersey.

A salesperson, who is a New Jersey resident, works out of his or her home for a non-New Jersey entity. The entity does not provide office space for the salesperson. The salesperson receives his or her calls, correspondence, and communication from the employer at home. The salesperson sells in a variety of states and does not perform 90 percent or more of his or her services in any state. This salesperson must be reported by the employer to New Jersey as the base of operations is his or her home, which is in New Jersey, and some services are performed in New Jersey.

. . .

"Employing unit" means an entity which has in its employ one or more individuals performing services for it within New Jersey, and includes:

1. The State of New Jersey; its instrumentalities or political subdivisions or any instrumentality of New Jersey and one or more other states or political subdivisions; individual proprietorships; partnerships; associations; trusts; estates; limited liability companies; joint stock companies; domestic or foreign insurance companies and corporations; receivers; trustees in bankruptcy and their successors; and legal representatives of deceased persons.

. . .

"Good cause" means, as used in N.J.S.A. 43:21-7(c)(7)(A) and N.J.A.C. 12:16-18.1(b), any situation over which the employer did not have control and which was so compelling that it would prevent the employer from acting in a timely manner. Good cause does not include: negligence, including that of an agent such as an accountant or attorney; or a mistake of law or fact.

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. . .

"Place from which service is directed and controlled" means the place from which the employer's basic authority and general control emanates. This is not necessarily the place at which a supervisor directly supervises the performance of services under general instructions from the place of direction and control.

Example: A consultant performs services in a variety of states. The consultant does not have a base of operations and reports directly to the job site, where he or she receives communication and directions from his or her employer. The employer's headquarters, from which the consultant receives general direction and control, are in New Jersey. Less than 90 percent of the services are performed in any one state. This individual must be reported by the employer to New Jersey since there is no specified base of operations, the place from which he or she is directed and controlled is in New Jersey, and some services are performed in New Jersey.

. . .

"Residence" means the principal place of abode for an individual as determined for a particular calendar year.

Example: A management consultant, who is a resident of New Jersey, performs consulting work for an entity in a variety of states, including New Jersey, at varying job sites. Less than 90 percent of his or her services are performed in any one state. The management consultant has no base of operations since he or she receives instruction from the employer at varying job sites. He or she performs no consulting services in the state from which direction and control is provided. This individual must be reported by the employer to New Jersey although there is no base of operations in New Jersey; this individual does not perform services in the state from which direction and control is provided, but this individual does live in New Jersey and has provided some services in New Jersey.

. . .

12:19-1.3 Partnerships

(a) A separate registration number and experience rating shall be assigned to each partnership that is composed of identical partners with identical interests, if all of the following conditions are met:

1. Each separate partnership joins in such a request to the Controller or the Controller's designee or the Controller or the Controller's designee determines that individual reporting is appropriate;

2.-4. (No change.)

12:19-1.4 Special employers

(a) The following situations outline special employment relationships which exist for tax purposes:

1. A crew leader shall be considered the employer of the crew which the crew leader has provided to the agricultural entity if:

i. (No change.)

ii. The crew leader has completed and submitted Department of Labor Form UC-1CL, "Status Report of Crew Leader Employing Unit"; and

iii. (No change.)

2. (No change.)

(b) For purposes of N.J.S.A. 34:8-24 et seq., an employment agency is not an "employer," but maintaining a license as an employment agency in no way precludes the Commissioner of Labor from determining that the employment agency is an "employer" for purposes of the Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq.

1. Entities or persons registering under N.J.S.A. 34:8-24 should make a separate inquiry to the Department of Labor for a determination as to their status under N.J.S.A. 43:21-1 et seq.

(a)

DIVISION OF WAGE AND HOUR COMPLIANCE

Wage Collection

Appeals

Adopted Amendment: N.J.A.C. 12:61-1.3

Proposed: April 17, 1995 at 27 N.J.R. 1520(a).

Adopted: May 26, 1995 by Peter J. Calderone, Commissioner, Department of Labor.

Filed: May 26, 1995 as R.1995 d.319, **without change**.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:11-57 et seq., as amended by P.L. 1991, c.205 and R.1:1A-4 and R.4:74-8.

Effective Date: June 19, 1995.

Expiration Date: December 16, 1996.

Summary of Hearing Officer's Report and Agency Responses:

A public hearing on the proposed amendment was held on May 12, 1995, at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdré L. Webster, Regulatory Officer, was available to preside at the hearing and to receive testimony. However, no one appeared to give testimony on the proposed amendment. As a result, the hearing officer recommended that the amendment be adopted without change. The public hearing record may be reviewed by contacting Deirdré L. Webster, Regulatory Officer, Office of Regulatory Services, Office of the Commissioner, Department of Labor, CN 110, Trenton, New Jersey 08625-0110.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

The adopted amendment does not contain any standards or requirements which exceed standards or requirements imposed by Federal law. As a result, an explanation or analysis of the adopted amendment pursuant to Executive Order No. 27(1994) is not required.

Full text of the adoption follows:

12:61-1.3 Powers of the Commissioner

(a) (No change.)

(b) (No change in text.)

(c) Such decision or award as mentioned in (b) above shall be a judgment when a certified copy thereof is filed with the Superior Court.

(d) (No change in text.)

(e) The Commissioner or his or her representative shall make the final decision of the Department.

(f) Appeals of the final decision of the Department shall be made to the Superior Court of New Jersey, Law Division pursuant to N.J.S.A. 34:11-63 and Rule 4:74-8 of the New Jersey Rules of Court.

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LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

Fees

Adopted Amendments: N.J.A.C. 13:35-6.13, 8.17, 9.6 and 10.8

Proposed: February 21, 1995 at 27 N.J.R. 640(a) (see also 27 N.J.R. 1746(a)).

Adopted: May 10, 1995 by the Board of Medical Examiners, Fred M. Jacobs, M.D., J.D., President.

Filed: May 26, 1995 as R.1995 d.330, **without change**.

Authority: N.J.S.A. 45:9-2 and 45:1-3.2.

Effective Date: June 19, 1995.

Expiration Date: September 19, 1999.

Summary of Public Comments and Agency Responses:

The Board of Medical Examiners afforded all interested parties opportunity to comment on the proposed amendments to N.J.A.C. 13:35-6.13, 8.17, 9.6 and 10.8, its fee schedule, as proposed in the New Jersey Register on February 21, 1995 at 27 N.J.R. 640(a). The official comment period ended March 23, 1995. In response to requests by commenters for more detailed information to justify the fee increases, the Board compiled detailed budgetary statistics and forwarded the information to all commenters as well as the regular distribution list. The Medical Society received its copy at the Board meeting on April 12, 1995. In order to provide commenters with time to review and meaningfully respond to the information, the Board extended the official comment period to May 8, 1995. Notice of the extended comment period appeared in the New Jersey Register on May 1, 1995 at 27 N.J.R. 1746(a). Announcements of the opportunity to respond were also forwarded to the Star Ledger, the Trenton Times, the New Jersey Hospital Association, the Department of Health and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Medical Examiners, Kevin Earle, Executive Director, 140 East Front Street, Trenton, New Jersey 08608.

During the initial comment period, the Board received six comments. Two additional comments, in response to the more detailed budgetary information provided by the Board, were received from the Medical Society of New Jersey and the Essex County Medical Society during the extended comment period. A summary of comments received, together with the Board's responses, follows.

The Medical Society of New Jersey, after receiving the detailed budgetary information which supports the Board's decision to raise fees, indicated in their second letter that the information clarified the assumptions made by the Division of Consumer Affairs in arriving at their final figures and proved that some of the Medical Society's worst fears regarding the fee increase were unfounded.

In response to the new information, the Medical Society also proposed alternatives for the Board's consideration. Specifically, the Medical Society suggested that the Board consider the following cost-saving measures:

COMMENT: In the area of employee salaries, the Medical Society suggested that the Board leave vacant the two administrative analyst positions currently slotted for hire.

RESPONSE: The administrative analyst positions targeted by the Medical Society for budget cuts were incorporated into the budget to manage the Focused Reeducation Program. Since the program's goal is to target doctors in need of reeducation and find methods to assist them in obtaining that education, the program will work to protect the consumers that the Board is charged to protect. Moreover, the program will benefit the regulated community by ensuring that the highest standards of professionalism are maintained. As a result, the Board believes that the positions are necessary and should remain in the budget.

COMMENT: The Board should allow for attrition among its staff at the level of at least one position a year at the lowest pay scale plus the cost for fringe benefits.

RESPONSE: While the Board appreciates the Medical Society's sincere efforts at targeting areas for cost containment and recognizes that every expenditure must be reviewed for its necessity, the Board does not believe that budgeting for attrition at the level suggested by the Society is responsible resource management. At best, to budget for attrition represents a wager. The need for accuracy demands historical data must be used where possible. Such guesses, even if educated, create the risk that the Board will be underfunded, which in turn augment the risk that higher increases will be necessary in the future. That is a risk the Board is unwilling to take.

COMMENT: The Board should incorporate "turnover savings" at the level of two percent per year.

RESPONSE: Since accurate savings figures for the turnover of employees cannot be ascertained, the Board could take no comfort in including them in budget projections. Should savings result from "turnover," they would presumably be incorporated into the Board's carry forward surplus and considered when future budgets are developed.

COMMENT: The Board should hold fiscal year '97 increases for enforcement to five percent and keep billable hours constant.

RESPONSE: Enforcement of the public health, safety and welfare is the Medical Board's primary charge. To arbitrarily curtail expenditures in this area is tantamount to putting a limit on public protection. The Board appreciates the need not to waste public funds. The Board evaluates complaints and then decides which matters should be referred to the Enforcement Bureau. The Board also attempts to resolve many matters of concern through settlements and cautionary letters, without resorting to expensive litigation. In an effort to curtail the need for future increases, the Board intends to actively oversee Enforcement Bureau efficiency. In these ways, the Board does endeavor to curtail enforcement expenses. The Board respects the essence of the Medical Society's suggestion; to limit needless spending but in order to safeguard New Jersey's citizens it cannot implement the Medical Society's suggestion as written.

COMMENT: The Board should reduce the DAG complement by two positions.

RESPONSE: Similar to the Medical Society's suggestion to reduce enforcement spending, the Board cannot implement a suggestion that hampers its effectiveness. Medical Board deputies serve the Board and the public by prosecuting consumer complaints. To reduce the number of DAGs working for the Board would do nothing to erase the caseload currently under review or prosecution. Therefore, the Board, while keeping a watchful eye on Division of Law efficiency through increased Division of Law oversight, cannot reduce DAG staff at this time.

COMMENT: The Medical Society suggested holding increases in postage, telephone, travel, data processing and other services to four percent.

RESPONSE: Where cost savings in these areas can be achieved the Board will make every effort to implement them; however, the figures used in the budget represent the Board's best projections based upon historical data. If surpluses result, they will be added to the carry forward to defray future expenses.

COMMENT: The New Jersey Association of Osteopathic Physicians, as well as the Essex County Medical Society, expressed that the increase in fees raises the cost of doing business in the State. The Medical Society of New Jersey asserted that the fee increases are particularly inappropriate when there is an emphasis on reducing health care costs. In their opinion, the Medical Board should look to cost-saving measures and the latest technologies so that fees can remain stable. In addition, the Association questions whether the organization of the Board is best suited to meet today's needs and if the Board's business processes are current and efficient.

RESPONSE: The Board, pursuant to N.J.S.A. 45:1-3.2, must meet its operating expenses through licensing and other fees. The statute also requires the agency to assess fees which are estimated not to exceed the amount required. As a result, the Board's fee increase is predicated upon an evaluation of detailed fiscal information regarding proposed expenditures during the next licensing period and the Board is confident that the estimate of fees required in order to continue its operations complies with these statutory requirements.

Although the Board is confident that the proposed fee increase is necessary to carry out its statutory charge to protect the health, safety and welfare of New Jersey's citizens, it appreciates The New Jersey Association of Osteopathic Physicians' comments on the need to streamline the Medical Board's operations in order to stabilize fees. The Board agrees that cost containment is integral to responsible Board management. Toward that end, the Board plans to implement measures to increase oversight of Board expenditures and to evaluate the budget on an ongoing basis. Indeed, the Board chartered a committee to review budget issues on an ongoing basis. The Board is also implementing an alternative dispute resolution program to be used for some of its caseload in an effort to hold down costs. These efforts are intended to curtail the necessity to raise fees in the future.

COMMENT: The Union County Medical Society commented that, in its opinion, the fee increases represent a retaliatory measure in response to an

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ADA lawsuit that had at issue certain questions asked on the biennial registration form. This assertion was echoed in part by the Medical Society's first letter to the Board regarding the fee increase. They assert that the monies spent by the Board defending *Medical Society v. Jacobs* are being recouped by the proposed fee increases.

RESPONSE: As outlined in the fiscal materials provided, the Board carry-forward for fiscal year 1994 was reduced by $119,000 to pay the judgment entered in the action *Medical Society v. Jacobs,* with the remainder of the judgment being satisfied by payment from State funds that did not impact licensees. To the extent that the judgment reduced carry-forward amounts, the judgment did impact on the overall necessity to raise fees in the amount of $4.00 per licensee.

COMMENT: The Union County Medical Society of New Jersey and the New Jersey Medical Society in its first letter also asserted that a seven percent Statewide salary increase for State workers exceeded reasonable limits in today's economy.

RESPONSE: Responsible budgeting incorporates historical data. The Medical Board, in arriving at projected salary costs, incorporated an historic three percent salary increase for inflation as well as a four percent increase for merit. While it is of course possible that these historical figures may not be realized, it would be imprudent not to budget for expenditures supported by historical data. Therefore, the best available historical evidence was used in preparing the budget. It should also be noted that any budgeted monies not utilized will be incorporated into the carry forward figures to offset the need for future fee increases.

COMMENT: Peter Mezzacappa, M.D., voiced doubt that fee increases were justified but expressed a desire to see more detailed fiscal information to document the Board's decision to increase fees.

RESPONSE: In response to Dr. Mezzacappa's request, as well as other interested parties, the Medical Board prepared more detailed fiscal information to guide commenters through the documentation that supported the Board's decision to raise fees. That information was distributed to all commenters as well as the regular Board mailing list. In addition, the Board extended the comment period to allow those who questioned the Board's decision to digest the information and meaningfully respond.

COMMENT: Three commenters, in addition to the Medical Society, commented that the fee increase rate outpaced inflation and, as a result, is inappropriate.

RESPONSE: Although the rate of inflation factors into general cost increases that comprise a final budget, it is not by any means the only factor. Inflation represents only one source of increased expenditures.

This budget, in particular, reflects additional, and in some cases unexpected, expenditures. The new budget reflects the cost of hiring two additional employees to staff a Focused Reeducation Program, a modest increase in Division of Law expenses, salary increases for Board office workers, which include not only pay raises but overtime costs necessitated by a statewide hiring freeze, and a predicted loss in license renewals. Unexpected costs to the Board include a 25 percent increase in Medical Board investigative costs for the Enforcement Bureau as a result of the State no longer subsidizing the Enforcement Bureau's fringe benefits, as well as a large increase in rental costs resulting from the end of the State's subsidy of Medical Board rental costs. Prior to fiscal year 1995, the professional boards received a 50 percent rental subsidy from the State. Based upon 9,078 square feet, the Medical Board's rent for fiscal year 1994 should have been $187,887; however, the Board was only charged $97,120. According to the memorandum issued by the Department of the Treasury, the Medical Board will be billed in full for rent totalling $187,140 in fiscal year 1995. This represents a 100 percent increase over fiscal year 1994 totals. Such large and unanticipated expenditures required the Board to raise fees to cover costs as mandated by statute.

COMMENT: Terry Hurlbut III, M.D., commented that the fee increase will cause doctors to relocate and make New Jersey less attractive for doctors just entering the marketplace. A number of commenters also expressed concern that the fee increase would cause a significant number of physicians not to renew their licenses, thereby decreasing the physician base from which biennial registration fees are collected.

RESPONSE: While the Board appreciates the expressed concerns, it is noteworthy that New Jersey's proposed registration fees, even with the fee increase, are comparable to, and in some cases, lower than other states. According to information received from the Federation of State Medical Boards, it costs $600.00 for a biennial registration in California, $400.00 in Maryland and $355.00 in Florida. Neighboring Connecticut charges its doctors $450.00 per year for a license and New York charges $330.00 for a biennial renewal.

Although the Medical Board recognizes that the fee increase is substantial, in absolute terms it only amounts to $45.00 a year. New Jersey's benefits to doctors—its centers of excellent medical technology, its proximity to other metropolitan medical institutes and generally, the economic advantages of doing business in the Garden State—far outweigh the detriment of an added $45.00 a year.

COMMENT: The Essex County Medical Society questioned why Division of Law and Office of Administrative Law expenses are not recouped out of general taxation sources when their work benefits all New Jersey's citizens.

RESPONSE: While it is true that all New Jersey residents fall within the penumbra of people who benefit from Division of Law and Office of Administrative Law labors, the same general statement can be made of all the work of all professional boards. The Board notes, however, that funds expended for work done by the Division of Law and the Office of Administrative Law benefit not only the public but, indeed, all licensees. By statute, the Board must cover the cost of its business through fees and monies recovered from malfeasers through fines and penalties assessed for regulatory violations. The expenditure for the labor of DAGs and the OAL is therefore a necessary cost of doing business. Moreover, this work acts as a vehicle for the collection of malfeaser fines and penalties that offset directly the need for even further increases in the fee schedule.

At the Board meeting on May 10, 1995, the Board offered all members of the public in attendance the opportunity to pose questions concerning the budget to June Levy, Fiscal Officer for the Division of Consumer Affairs. No members of the public posed any questions at that time.

Mr. Neil Weisfeld, a representative from the Medical Society of New Jersey, later commented that the fee increase appeared excessive, and reiterated many of the suggestions that the Medical Society made in its April 24, 1995 comment. Those suggestions and comments are addressed above.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements pertaining to a fee increase are governed by N.J.S.A. 45:1-3.2 and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

13:35-6.13 Fee schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

1. Medicine and Surgery	
(M.D. or D.O. license)	
i. Initial application fee	$325.00
ii. Initial registration fee	
(1) If paid during the first year of a biennial renewal period	340.00
(2) If paid during the second year of a biennial renewal period	170.00
Recodify existing iv.-vi. as iii.-v. (No change in text.)	
vi. Biennial registration	340.00
vii. (No change in text.)	
2. Podiatry (license)	
i.-ii. (No change.)	
iii. Initial registration fee	
(1) If paid during the first year of a biennial renewal period	230.00
(2) If paid during the second year of a biennial renewal period	115.00
iv. (No change.)	
v. Biennial registration	$230.00
vi. (No change.)	
3. Bio-analytical laboratory directorship, plenary license	
i.-iii. (No change.)	
iv. Initial registration fee	
(1) If paid during the first year of a biennial renewal period	230.00

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(2) If paid during the second year of a biennial renewal period 115.00
v. Biennial registration $230.00
4. Bio-analytical laboratory directorship, specialty license
i.-iii. (No change.)
iv. Initial registration fee
(1) If paid during the first year of a biennial renewal period 230.00
(2) If paid during the second year of a biennial renewal period 115.00
v. Biennial registration $230.00
5. Midwifery (license)
i.-iii. (No change.)
iv. Initial registration fee
(1) If paid during the first year of a biennial renewal period 230.00
(2) If paid during the second year of a biennial renewal period 115.00
v. Biennial registration $230.00
6. Certified Nurse Midwifery (registration)
i.-iii. (No change.)
iv. Initial registration fee
(1) If paid during the first year of a biennial renewal period 230.00
(2) If paid during the second year of a biennial renewal period 115.00
v. Biennial registration, C.N.M. $230.00
vi. (No change.)
7.-9. (No change.)

13:35-8.17 Fee schedule
(a) The fee schedule for the Hearing Aid Dispensers Examining Committee of the State Board of Medical Examiners, in the Division of Consumer Affairs of the Department of Law and Public Safety, shall be as follows:
1.-4. (No change.)
5. Initial Registration Fee
i. If paid during the first year of a biennial renewal period: 150.00
ii. If paid during the second year of a biennial renewal period: 75.00
6. Endorsement:
i. Review of credentials: $30.00
7. Biennial registration renewal 150.00
8.-12. (No change.)
(b)-(c) (No change.)

13:35-9.6 Fee schedule
(a) The fee schedule for certification as an acupuncturist is as follows:
1.-3. (No change.)
4. Initial Registration Fee:
i. If paid during the first year of a biennial renewal period: 230.00
ii. If paid during the second year of a biennial renewal period: 115.00
5. Biennial Registration 230.00
6.-11. (No change.)

13:35-10.8 Fees
(a) The following fees shall be charged by the Board for athletic trainer registration:
1.-2. (No change.)
3. Initial Registration Fee
i. If paid during the first year of a biennial renewal period: 70.00
ii. If paid during the second year of a biennial renewal period: 35.00
4. Biennial registration 70.00
5.-6. (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
Alternative Resolution Program
Adopted New Rules: N.J.A.C. 13:35-11

Proposed: April 3, 1995 at 27 N.J.R. 1363(a).
Adopted: May 10, 1995 by the Board of Medical Examiners, Fred Jacobs, M.D., J.D., President.
Filed: May 26, 1995 as R.1995 d.331, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 45:9-2 and 45:9-19.4.
Effective Date: June 19, 1995.
Expiration Date: September 21, 1999.

Summary of Public Comments and Agency Responses:
The State Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed new rules, N.J.A.C. 13:35-11, relating to the creation of the Alternative Resolution Program. The official comment period ended on May 3, 1995. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on April 3, 1995 at 27 N.J.R. 1363(a). Announcements were also forwarded to: The New Jersey Association of Osteopathic Physicians and Surgeons, the Executive Director of the New Jersey Podiatric Medical Society, the Federation of State Boards of Medical Examiners, the Medical Society of New Jersey, the New Jersey Hospital Association, the University of Medicine and Dentistry of New Jersey, the Department of Health, Camden Courier Post, the Atlantic City Press, the Trenton Times, Star Ledger, Bergen Record and Asbury Park Press. A full record of this opportunity to be heard can be inspected by contacting the State Board of Medical Examiners at 140 East Front Street, Trenton, New Jersey 08608.

The New Jersey State Board of Medical Examiners received two comments from interested parties during the official 30 day comment period. A summary of those comments and the Board response follows:

COMMENT: A comment was received from the New Jersey Association of Osteopathic Physicians and Surgeons, expressing support for the new rules, as well as a request that the Board President consider appointing an osteopathic member of the Board to the Impairment Review Committee.

RESPONSE: The Board is appreciative of the support from the Osteopathic Association. The Board is aware the collaborative effort on which it is embarking will only meet its potential if trust between the medical community and the Board can be developed. Organizations like the Osteopathic Association and the Medical Society will, by necessity, play a vital role in conveying to their memberships that the approach of the Alternative Resolution Program is non-punitive and its processes confidential. The Board looks forward to working with these organizations in their efforts to educate their constituencies.

While the Board President has not yet made any determinations concerning which members will be appointed to the Impairment Review Committee, every effort will be made to take into account the experience, talents, interests and availability of individual members. Certainly the present osteopathic members of the Board are well qualified to serve in this role, but an

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appointment will need to await further refinement of the commitments that will need to be made.

COMMENT: The Medical Society and the Physician's Health Program have expressed concern that the proposal inappropriately calls for the submission of coded summary reports relating to new participants directly to the Board for review prior to IRC review. It is argued that this process will "inhibit physicians from joining the program" and provide access to "all data" to "all the DAGs and all the Board investigators." It suggests language calling for reports only where program applicants are found to be unacceptable for participants.

RESPONSE: The comment appears to reflect a misunderstanding of the role that the Board intends to play vis-a-vis its review of summary and periodic reports relating to participating licensees. Just as the process contemplates the submission of periodic reports on status and rehabilitative progress, the process contemplates that after its initial review, the IRC will provide a coded preliminary summary report to the Board. Under the regulatory scheme established here, the Board is not called upon to endorse or veto participation; it may request additional review by the IRC. Nor will the Board be provided with any information from which the identity of participants could be discerned—only general information about the nature of the impairment, the field of practice and the general rehabilitative plan. Nonetheless technical changes will be adopted to clarify that the coded summary report to be provided to the Board does not necessarily encompass all of the initial information brought to the IRC by a PAP in its initial report.

Accordingly, the Board does not believe that the process contemplated will have the chilling effect on participation that the Physicians' Health Program fears. Great efforts have been taken to structure a process that ensures confidentiality. The information contemplated to be provided to the Board in the coded summary report is that which is minimally necessary to assure the Board that the process is adequately protective of the public. Unless the triggers set forth in the rule are deemed by the IRC to have been met, neither "all of the DAGs" nor "all of the investigators" will have access to underlying information. The Board members, most of whom are themselves physicians and health care providers, have a deep respect for, understanding of and commitment to confidentiality. With appropriate guidance from sponsoring professional assistance programs, the Board is confident any fears that prospective applicants to the program may have can be allayed and the clear advantages to participation will ultimately ensure the success of the program.

COMMENT: The Medical Society and the Physicians' Health Program have also expressed a concern that language appearing at N.J.A.C. 13:35-11.4(a)14 "contradicts the philosophy of the program," and somehow contravenes Federal confidentiality regulations by authorizing "arbitrary" demands for the production of data.

RESPONSE: The provision at issue sets forth the confidentiality protections afforded to program participants, citing N.J.S.A. 45:9-19.3. The provision also reflects that the IRC would not be breaching confidentiality were it to find a need to enlist the assistance of a consultant or seek information from a person who has knowledge of the extent and nature of the impairment. Similarly, should the Board or the Attorney General obtain new or independent information about a licensee who is a participant in the program, its investigation of such information would not amount to a breach of confidentiality.

COMMENT: The Physicians' Health Program has noted that there is no provision in the rules holding the Board, the Attorney General or the Division of Consumer Affairs responsible for a breach of confidentiality.

RESPONSE: With respect to those participants referred by participating professional assistance programs or those reported directly to the IRC, the Board, the Attorney General and the Division of Consumer Affairs will not have access to the information concerning identity. Moreover, the Board, its attorneys and the Division, over many years now, have endeavored to see this program become a reality and are committed to its success. Through its commitment to the program's underlying principles, the Board looks forward to the development of mutual trust. As with any new and innovative undertaking, the Board expects that unanticipated issues will arise with regard thereto. It is inevitable that in some instances the regulatory language that we are now adopting will not be dispositive. The Board encourages sponsoring professional assistance programs to bring any operational concerns to its attention so that mutually satisfactory resolutions can be fashioned.

Summary of Agency-Initiated Changes:

1. At N.J.A.C. 13:35-11.3(a)2, the word "summary," appearing in the first line of the paragraph, modifying report, is changed to read "initial." The word "initial" is also to be substituted for the word "summary" in the second to last sentence in the subsection.

2. At N.J.A.C. 13:35-11.3(a)8, the word "report" is changed to "reports."

3. At N.J.A.C. 13:35-11.4(a)3, the word "summary" modifying report is changed to read "initial."

4. At N.J.A.C. 13:35-11.4(a)6, the word "the" preceding "summary report" is changed to read "a."

5. At N.J.A.C. 13:35-11.4(a)6, the second reference to "PAP" is changed to read "IRC."

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the program established pursuant to the rules involves no Federal standards or requirements.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 11. ALTERNATIVE RESOLUTION PROGRAM

13:35-11.1 Definitions

As used in this subchapter the following words and terms have the following meanings, unless the context indicates otherwise:

"Alternative Resolution Program" or "ARP" means a program established pursuant to this subchapter for those subject to Board jurisdiction who are suffering from chemical dependencies and other impairments which shall permit such licensees to disclose their status to an entity which would allow for confidential oversight.

"Board" means the New Jersey State Board of Medical Examiners.

"Chemical dependency" means a condition involving the continued misuse of chemical substances.

"Chemical substances" is to be construed to include alcohol, drugs or medications, including those taken pursuant to a valid prescription for legitimate medical purposes and in accordance with the prescriber's direction, as well as those used illegally.

"Confidential" means that a participating licensee's identity (as well as any information from which a licensee's identity could be deduced) shall be maintained in a limited access file maintained by the Impairment Review Committee ("IRC"), with disclosure provided only to those persons whom the IRC determines have a need to know, in order to perform their role in the review process.

"Impairment" means an inability to function at an acceptable level of competency, or an incapacity to continue to practice with the requisite skill, safety and judgment, as a result of alcohol and/or chemical dependency, a psychiatric and/or emotional disorder, senility or a disabling physical disorder.

"Impairment Review Committee" or "IRC" means the subcommittee of the Board created pursuant to this subchapter.

"Licensee" means a physician (including a resident or intern), podiatrist, bioanalytical laboratory director, certified nurse midwife, physician assistant or other professional subject to regulation by the Board.

"Panel" means the Medical Practitioner Review Panel.

"Professional assistance program" or "PAP" means a publicly or privately organized entity offering services to facilitate the rehabilitation of licensees suffering from chemical dependencies or other impairments. A program may limit its services to specific categories of licensees.

13:35-11.2 Creation of Impairment Review Committee

The Board shall establish a committee to review matters involving practitioners suffering from chemical dependencies or other impairments. This committee shall be comprised of five members to include: two members of either the Board or the Panel, to be appointed by the Board President; two individuals representing approved professional assistance programs which provide services to at least one third of the ARP participants; and one individual designated by the Commissioner of Health, who is acceptable to both the Board President and the individuals representing approved professional assistance programs. This committee shall be known as the Impairment Review Committee ("IRC") and shall meet on a regular basis. The Medical Director of the Board and the Executive Director of the Board shall serve as staff to the IRC and shall be available to assist the IRC at its meetings. With regard to independent referrals (not made by an approved professional assistance program), the

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Executive Director shall provide the IRC with all of the information, including the identity of the licensee about whom the referral has been made, which was provided with the referral, along with any information concerning concurrent investigations or consumer complaints relating to the licensee. With respect to those referrals made by approved professional assistance programs, the Executive Director shall advise the IRC of any information concerning concurrent investigations or consumer complaints, without disclosing the identity of the licensee, so that the IRC will be in a position to assess whether participation in the program is appropriate.

13:35-11.3 Duties of an approved professional assistance program

(a) An approved professional assistance program shall:

1. Promptly conduct appropriate inquiry with regard to every referral received to determine whether the information indicating licensee impairment is sufficiently reliable to warrant further review;

2. Make *[a summary]* ***an initial*** report to the IRC concerning every referral which suggests that a licensee has a chemical dependency or any other impairment within 30 days of receipt of a referral. That report shall indicate the licensee's code number and sufficient information concerning the suspected impairment and the nature of the practice for the IRC to conduct a meaningful review. The report shall address: the nature of the impairment; whether the licensee rendered or was expected to render patient care while impaired; whether patients were harmed either directly or indirectly by the licensee's conduct; whether the licensee has engaged in an activity which could render that licensee subject to criminal penalty including, but not limited to, the illegal distribution of controlled dangerous substances or sexual abuse of patients; and whether the licensee previously has undergone a rehabilitation program, and, if so, when that occurred, the nature and the duration of the prior treatment and the results thereof. The *[summary]* ***initial*** report shall also include recommendation to the IRC concerning a proposed plan of treatment; the services which will be provided by the sponsoring program; practice restrictions which should be imposed, if any; the monitoring regimen to be instituted, if any; the supervision and reporting to be required and by whom and the frequency of its periodic reports to the IRC. Alternatively, the PAP may recommend no further action be taken when, after inquiry, it is determined that there is insufficient information upon which to conclude that the licensee is suffering from a chemical dependency or any other impairment;

3. Conduct such supplemental inquiry as may be directed by the IRC and may request of the IRC that further investigation be conducted by staff, investigative personnel or the Attorney General, if appropriate;

4. Prepare a letter agreement, including a plan for recovery relating to each referral, setting forth the participant's obligations and memorializing his or her consent to the release of all pertinent medical, psychiatric or personnel records to the IRC should such documents become necessary as part of its review, as well as the licensee's consent to provide the notice to the IRC of all events as set forth in (a)7 below and notice to comparable PAPs or licensing boards as set forth in (a)8 below;

5. Secure from each participant his or her signature on both the summary report and a letter agreement, maintain the original of both in a secure place and provide a coded copy, without identifying information, to the IRC;

6. Immediately report to the IRC and disclose the identity of the participating licensee if that licensee:

i. Has not complied with the terms of the letter agreement or the plan as set forth in the summary report;

ii. Has been the subject of a urine or blood test report which is positive for the presence of a substance not appropriately prescribed for a legitimate documented reason;

iii. Has otherwise demonstrated a relapse or impairment;

iv. Has engaged in deceptive behavior (including, but not limited to, an attempt to invalidate a drug screen, substitute a specimen, present a fraudulent attendance record);

v. Has suffered an exacerbation of a condition rendering the licensee incapable of practicing with requisite skill and safety; or

vi. Has had a change of status (including, but not limited to, the initiation of a disciplinary proceeding at a health care facility, an arrest or a disappearance);

7. Provide notice of program participation to comparable professional assistance programs in other jurisdictions if the licensee should elect to leave this State or should apply for initial licensure in another state, if such programs exist. If the jurisdiction to which the licensee is planning to move does not have a professional assistance program which has an arrangement with the licensing board in that jurisdiction, the PAP shall provide notice directly to the licensing board. A copy of such notice shall be provided to the IRC; and

8. Prepare periodic report***s*** as to the progress of all of the participants which it is sponsoring, pursuant to a schedule as established by the IRC, and, as appropriate, coordinate the submission of any other documentation directed.

13:35-11.4 Duties of the Impairment Review Committee

(a) The IRC shall perform the following duties, as well as such others as the Board may require. The IRC:

1. Shall accept from licensees, and from other members of the public, reports (with the individual's identity) concerning licensees who may be suffering from chemical dependencies or other impairments;

2. Shall accept referrals (with the individual's identity) from the Board;

3. Shall accept coded *[summary]* ***initial*** reports from approved professional assistance programs (without any information from which the individual's identity can be discerned);

4. May request additional information from staff, the sponsoring PAP, the participant or persons with knowledge concerning a participant's condition or progress in rehabilitation;

5. Shall promptly review each referral to determine if participation in the ARP is appropriate. In making this determination, the IRC shall give consideration to the following factors:

i. The nature of the impairment;

ii. Whether the licensee rendered or attempted to render or was expected to render care at a time when impaired;

iii. Whether patients were harmed either directly or indirectly by the licensee's conduct;

iv. Whether the licensee has engaged in an activity which could render the licensee subject to criminal penalty, including, but not limited to, the illegal distribution of controlled dangerous substances or sexual abuse of patients;

v. Whether the licensee previously has undergone a rehabilitation program, and, if so, when that occurred, the nature and the duration of the prior treatment and the results thereof; and

vi. Whether such factors in a particular case would make participation in the Alternative Resolution Program inconsistent with the public interest;

6. With respect to PAP referrals, shall transmit to the Board *[the]* ***a*** coded summary report (without the disclosure of any information from which the individual's identity could be discerned) as prepared by the *[PAP]* ***IRC*** either upon completion of its review or within 30 days, whichever occurs first;

7. With respect to referrals from the Board, the public or other practitioners, shall prepare the summary report, reflecting the factors set forth at (a)5 above to be transmitted to the Board. If the IRC review has been initiated by a self-referral or by a report by another practitioner, reports to the Board shall be coded (without the disclosure of any information from which the individual's identity could be discerned). If the IRC has concluded that, based upon its review, there is insufficient information upon which to conclude that the licensee is suffering from a chemical dependency or other impairment, it shall so state in its confidential summary report, indicating the extent of its review. If the IRC has determined that participation should be permitted, the summary report shall address the following, as appropriate:

i. What treatment is warranted;

ii. What services will be provided by the sponsoring program;

iii. What practice restrictions should be imposed, if any;

iv. What monitoring regimen should be instituted, if any;

v. What supervision and reporting should be required and by whom; and

vi. At what frequency periodic interviews with the IRC should be scheduled;

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8. Shall conduct such supplemental inquiry as may be directed by the Board;

9. Shall review coded letter agreements between the PAP and participating licensees embodying the terms of participation as reviewed by the Board and mandating that certain notice shall be provided to other jurisdictions if the licensee should elect to leave this State or should apply for initial licensure in another state, or in response to a particular inquiry from another state or regulatory agency or a health care facility at which the participating licensee has applied for privileges;

10. Shall notify the Board of any rejection by the licensee of a term of participation, including a refusal to consent to the release of records, and if no new agreement can be reached, shall notify the licensee that he or she may not participate in the program and shall disclose the licensee's identity and transmit the entire IRC file to the Board for appropriate disciplinary review;

11. Shall promptly review all reports submitted pursuant to such letter agreements, requesting supplemental investigation or appearances, as appropriate;

12. Shall immediately review any report indicating that a participating licensee has not complied with the terms of the letter agreement or has otherwise demonstrated a relapse or impairment, and shall thereafter provide the Board with notice of any information, which appears to be reliable and for which no acceptable explanation has been proffered, concerning noncompliance;

13. Shall provide the Board with periodic coded reports, submitted in accordance with a schedule established by the IRC, as to the status of all participating licensees and any recommendations for modification of the terms of agreement;

14. Shall, throughout the duration of the term of the agreement, maintain the agreement and information relating to the licensee as a matter under investigation relating to possible licensee misconduct and thus shall, except as provided herein, afford confidentiality pursuant to N.J.S.A. 45:9-19.3, except that nothing herein shall preclude the Board, the IRC or the Attorney General from conducting appropriate investigation of the relevant facts, securing opinions from consultants and complying with judicial directives; and

15. Shall, upon a licensee's successful completion of the terms as provided by the letter agreement, advise the Board that it deems the matter to be closed without a finding of cause for action, except that nothing herein shall preclude the Board or the Panel from reviewing and relying upon all relevant materials should it receive a subsequent referral regarding the licensee.

13:35-11.5 Professional assistance program approval

A professional assistance program seeking to sponsor participants in the ARP first shall seek approval from the Board. A PAP applying for approval shall be required to enter into a formal agreement with the Board, attesting to its willingness and ability to provide necessary services to participants and to work with the IRC in the discharge of its responsibilities. Upon request, any PAP seeking approval shall provide the Board with sufficient information concerning its staffing, the services it provides, available treatment referrals and monitoring contracts so that the Board can be assured that the program is in a position to discharge its obligations under the agreement. Each program shall designate a plenary licensed physician who shall serve as program director and who shall be responsible to assure that the program fulfills its obligations under the agreement. By that agreement the Board shall grant its approval and delineate the conditions upon which approval could be rescinded.

13:35-11.6 Colleague referrals

The Board authorizes the IRC and approved professional assistance programs to accept reports from practitioners pursuant to N.J.S.A. 45:9-19.5 and any practitioner who files such a report directly with the IRC, an approved PAP or with any of the report recipients otherwise authorized by law shall be deemed to have discharged the obligation imposed by statute. Although the PAP need not disclose to the IRC, the Panel or the Board the identity of colleagues who file such report, it shall maintain that information on file and shall make it available to the Board in the event that an inquiry is initiated as to whether the reporting colleague discharged his or her obligation pursuant to N.J.S.A. 45:9-19.5. If the reporting practitioner elects to file a report directly with the IRC, the Panel or the Board, he or she may utilize that licensee's code number in the report. These reports shall be retained confidentially if the licensee agrees to the terms of participation in the program.

13:35-11.7 Alternate Resolution Program pilot period

Two years following the operative date of this subchapter, the Board shall determine, after study and consultation, whether the program established pursuant to this subchapter should be continued, altered, expanded or discontinued. Should the Board conclude that the program should be terminated, those currently participating shall be permitted to continue with the confidentiality protection set forth in this subchapter. Should an approved professional assistance program cease offering services, the Board shall allow participating licensees a period of 30 days to seek the sponsorship of another approved professional assistance program provided that interim monitoring provision are proposed and acceptable to the Board.

(a)

DIVISION OF CONSUMER AFFAIRS

Board of Professional Engineers and Land Surveyors

Land Surveyors; Continuing Competency

Adopted Amendment: N.J.A.C. 13:40-6.1

Adopted New Rules: N.J.A.C. 13:40-11

Proposed: November 7, 1994 at 26 N.J.R. 4314(a).

Adopted: May 4, 1995 by the State Board of Professional Engineers and Land Surveyors, Joseph E. Neglia, President.

Filed: May 22, 1995 as R.1995 d.305, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:8-35.2.

Effective Date: June 19, 1995.

Expiration Date: August 3, 1995.

Summary of Public Comments and Agency Responses:

The State Board of Professional Engineers and Land Surveyors afforded all interested parties an opportunity to comment on the proposed amendment to N.J.A.C. 13:40-6.1 and the new rules, N.J.A.C. 13:40-11, relating to continuing competency. The official comment period ended on January 7, 1995. However the comment period was extended an additional 30 days at the request of members of the public who were unable to send their comments in prior to January 7, 1995. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on November 7, 1994 at 26 N.J.R. 4314(a).

Announcements also were forwarded to: Newark Star Ledger, Bergen Record, Asbury Park Press, Trenton Times, Courier Post, New Jersey Society of Professional Land Surveyors, New Jersey Society of Professional Engineers, New Jersey Society of Municipal Engineers, Consulting Engineers Council of New Jersey, Garden State Land Surveyors Alliance.

A full record of this opportunity to be heard can be inspected by contacting the Board of Professional Engineers and Land Surveyors, 124 Halsey Street, Newark, New Jersey 07102.

The New Jersey State Board of Professional Engineers and Land Surveyors received 173 comments with regard to the proposal. Many of the commenters expressed the same concerns with regard to the proposal. The comments were reviewed and are summarized below with the Board's responses. The commenters were:

Robert L. Barton, Eugene I. Voelker, Luciano A. Gado, Keystone Surveying Company, Inc., by Norbert J. Yaglinski, Barry D. Wollk, Garden State Land Surveyors Alliance, Inc., by James P. Deady, Frederick H. Singer, Norman L. Weiss, Garden State Land Surveyors Alliance, by Laura J. Brill, George B. Vliet, George T. Lucas, James W. Simensen, George Shulack, James Di Memmo, Studer and McEldowney, P.A., by H. Clay McEldowney, Joseph J. Vitale, Garden State Land Surveyors Alliance, by Joseph A. Donato, Jr., ARC Surveying Company, Inc., by Barry E. Slimm, Robert W. Lee Associates, Inc. by Robert W. Lee, Pirod Inc. by John R. Erichsen, J. Thomas Wood, Jr., Sequoia Engineering & Design Associates, by Eli Yagor, Robert

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Watson, John C. Hoffman, Robert R. Rahnefeld, Henry B. Smith, Robert W. Blauvelt, Barry Goldsmith, Joseph A. Donato, Jr., Ernest W. Hausmann, Nino Giancaterino & Associates, by Nino Giancaterino, Irving E. Kinney, Jr., Charles J. Kupper, Jr., Sante Falvo, Thomas J. Morganelli, Ernest J. Mitchell, Wm. F. Zimmerly & Associates, by Bill Zimmerly, Thomas P. Harley, Kenneth Collict, John F. Egan, Jr., Bruce D. Niblett, Delaware Valley Associates, Inc., by Daniel E. Kent, III, Robert Marshall, Charles Wortlington, Barbara Armand, Michael Tisler, David R. Bernard, Anthony G. Lombardo, Jr., Anthony J. Manno, Arthur B. Casperson, George E. Schilling, John J. Vitale, Jr., Rowland W. Erb, Joseph Nikforchuk, Associated Consultants, by Carlton N. Frost, Robert M. Siluk, Stone Harbor, by Thomas R. Deneka, Stone Harbor by Sam Deneka, Earl Higginbotham, Frank A. Intessimoni, Jr., Thomas H. Ahlers, Clyde K. Fisk, Harold R. Conover, Richard L. Federico, Robert R. Sundermire, John F. Muschko, Edward A. Barnes, Joseph A. DiBuono, Studer and McEldowney, by Gerald D. Phillkill, Theodore W. Lauer, Albert A. Fralinger, Jr. Consulting, by Barry S. Jones, Maser Sosinski & Associates, by John Alexander, Continental Properties, by James M. Cahill, New Jersey Society of Professional Land Surveyors, by Raymond Swiderski, J. Henry Ditmars, John F. Gellenthin, Remington & Vernick Engineers, by Craig F. Remington, Robert H. Thomas, Sr., Planning Engineering Land Surveying, Inc., by Earle B. Hallowell, Jr., Henry B. Bobo, Richard C. Waddington, Jr., George F. Keppler, Nicholas J. Wunner, P. Scott Boyer, Ernest M. Myhren, Gerard Scott, Clifford A. Ellis, Norman Porter, Frederick H. Singer, Harry J. Sypniewski, Michael L. Ritchie, Mervin H. Chew, W. Jerome Smith, Jr., Terrence Magee, Herbert J. Neilio, Hayes Hewitt, Robert G. Mattson, Eugene V. Knox, Vincent Schulte, Michael Lamplugh, Sr., Joseph V. Scolari, III, Brian E. Anderson, Robert K. Sutton, Ferdinand F. DiRosa, Fredic C. Burton, II, Robert J. Farrar, Edward S. McConnell, Michael J. McGuire, Douglas C. Moore, Edward G. Duckinfield, Jr., Lawerence J. Bobb, Joseph Wright, Sr., Harry J. Duckinfield, Michael S. Zimmer, Karl G. Gleissner, Barry A. Gleissner, Richard A. Stabile, Joseph J. Feldman, A.W. LaDue, William E. Beardslee, Robert P. Vicari, Jeffrey J. Orsoe, Donald E. Allen, Theodore W. Lauer, James A. Clancy, Charles P. Gillies, James G. Clancy, Franklyn C. Glucker, Donald G. Reade, Robert Badger, Harold J. Bozarth, Jr., Elmo J. Bodrato, Elwood C. Heggan, Daniel V. Pizzelli, Peter G. Burgess, Kenneth S. Semegran, Martin Byrne, John A. Lawrence, James R. Boney, Jesse Kozlowski, James P. Weidener, Thomas L. Yager, Richard F. Smith, Jr., Richard O'Connor, John E. Collazuol, Timothy P. O'Connor, Garden State Land Surveyors Alliance, by George T. Lucas, Berson, Ackermann & Associates, Inc., by Bernard R. Berson, Adamas, Rehmann & Heggan Associates, Inc. by Robert R. Heggan, Linda B. Marks, Kenneth G.B. Job, Henry J. McGuigan, Robert J. Jenny, Dominick A. Miniaci, Joseph A. Rosso, Neal Barton, Robert R. Heggan, Jr., Vincent J. Rigelon, Jr., Edward G. Austen, Sr., William H. Carey, Taylor, Wisemann & Taylor, by Angelo J. Caracciolo, Donald L. Mackay, Ralph Thomas Jr., Timothy R. Corcoran, Albert A. Fralinger, Jr., Wm. N. Fritziner, John T. Butler, Charles H.F. Blumeling, III, James E. Dulny, Anthony F. DiMauro, Site Evaluations, by William B. Honachefsky, William M. Kemp, Brendan Nally, John R. Depalma, one letter by Anonymous Sender.

N.J.A.C. 13:40-6.1 Fee schedule

COMMENT: Since the continuing competency program is part of license renewal, an increase in the renewal fee would be appropriate. (Two comments received)

RESPONSE: The Board anticipates that the vast majority of persons/entities seeking Board approval for continuing competency courses will be course providers, not individual licensees. As a result, an increase in the biennial renewal fee for each licensed land surveyor in New Jersey to cover the cost of course approval would be unfair. Instead, the Board believes that the person/entity who seeks approval of courses should bear the expense.

COMMENT: In light of the registration fee, the $10.00 review fee should be borne by the Board. (Three comments received)

RESPONSE: The Board disagrees. In order to cover the administrative costs associated with course approval, the Board needs to charge a fee. It is anticipated the majority of persons/entities that will seek course approval(s) will be the providers, so that most licensees will not incur an expense in seeking approval of courses. For the licensee who does seek approval of a course, he or she will be required to pay a nominal fee of $10.00.

COMMENT: It should be the responsibility of the course provider to obtain approval prior to giving the course, to avoid confusion in the credits acquired in a renewal period. Therefore the course provider should bear the $10.00 renewal fee. (Nine comments received)

RESPONSE: Each provider who seeks approval of course(s) will be required to pay a fee each biennial period in which he or she seeks to provide course(s). Again, the Board believes providers will be the predominant persons/entities seeking course approval, therefore incurring the approval expense. However, where a licensee wants to take a course that interests him or her, the fact that the course provider has not sought Board approval should not preclude that licensee from taking the course. Likewise, the Board believes it to be unlikely that an out-of-State course provider will seek New Jersey Board approval for its course when the course is given in that other state. If prior course approval were required, it would preclude the licensee from taking a course given in another state. The Board does not want to limit the number of course options for licensees and therefore disagrees with the commenter regarding the suggested change in the fee schedule.

COMMENT: In addition to the course materials being Board approved, instructors should be Board approved also. (One comment received)

RESPONSE: The Board's approval process includes the review of the course material and the instructor. N.J.A.C. 13:40-11.11 requires providers and licensees (where applicable) to submit materials to the Board about the instructor to help in the Board's review and final approval of the course and instructor if warranted.

COMMENT: The cost incurred when a licensee seeks approval of a course should be between $2.00 and $5.00. (One comment received)

RESPONSE: The Board believes that a $10.00 fee placed on licensees seeking Board approval of a course is reasonable, particularly in light of the administrative costs involved in implementing the program.

COMMENT: N.J.A.C. 13:40-6.1(a)9ii should be clarified in the instance where a licensee applies for review of a course, followed by another licensee who applies for review of the same course. Does the second licensee have to pay the $10.00 fee? (Two comments received)

RESPONSE: Until the course is approved by the Board, any licensee who wants to have the course reviewed for approval before taking the course, must pay the approval fee. Prior to taking a course, the licensee can call the Board to find out whether a course is being reviewed or has been approved.

COMMENT: There should be no fee for pre or post approval of courses. (Four comments received)

RESPONSE: The Board disagrees with this comment. There will be administrative costs that will need to be paid for. The Board anticipates that the course providers will be the dominant persons/entities who seek course approval. Therefore, they will be the major funding source for the Board's administration of the continuing competency program.

COMMENT: What happens to the licensee when the Board takes an excessive amount of time in approving a course? (One comment received)

RESPONSE: The Board anticipates that timely responses will be made regarding course approval and will take the appropriate steps to see that this is the case.

COMMENT: The fee that will be required of program providers for course review may encourage many providers to offer their courses in nearby states instead of in New Jersey so as to avoid paying the fee. If so, will the Board be able to review all the courses submitted by licensees prior to the courses being administered? (One comment received)

RESPONSE: The Board does not believe that the majority of course providers will offer their courses in nearby states and not in New Jersey simply to avoid paying the course approval fee to the Board. There are approximately 2000 licensed land surveyors in New Jersey who will be required to satisfy the continuing competency requirements. The Board believes it will not be difficult for the provider to recoup the fee spent on the course approval once the course is administered in New Jersey. It is important to note that approval of a course prior to it being administered is not mandatory. A licensee may receive course approval after having taken the course.

N.J.A.C. 13:40-11.1 License renewal

COMMENT: By using the phrase "renewal application" does this section mean that every two years a licensee will have to reapply for his or her license instead of renew it? (One comment received)

RESPONSE: The answer to this comment is no. A renewal application seeks to extend the life of an already existing license for another two years. However, as part of the license renewal process, the licensee will have to provide a signed statement that he or she satisfied the continuing competency requirements. N.J.A.C. 13:40-11.7 outlines what information the licensee will be required to include.

N.J.A.C. 13:40-11.2 Definitions

COMMENT: In the definition of core course/activity, a licensee suggests changing ". . . maintain, improve or expand skills and knowledge and develop new and relevant technical skills and knowledge. . ." to ". . . maintain,

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improve or expand skills and knowledge **or** develop new and relevant technical skills and knowledge. . ." (One comment received)

RESPONSE: The Board believes that the definition is clear as stated. The maintenance, improvement and expansion of one's skills and knowledge is just as important as the development of new and relevant technical skills and knowledge. Therefore the use of the word "and" instead of "or" is proper in this instance.

COMMENT: Why are core and non-core activities separated with differing credits awarded for each? A non-core professional responsibility course is just as important as a core course on technical aspects of the profession. (Five comments received)

RESPONSE: The Board believes that continuing competency must include both core technical and non-core consumer-related education, and believes the dichotomy and the related credit requirements between core and non-core courses is appropriate.

COMMENT: A licensee would like "provider" and "instructor" to be defined. (One comment received)

RESPONSE: The "provider" of the course is the sponsor of the course who seeks approval. He or she can also be the instructor. The instructor is the person who teaches the course. The Board believes these distinctions can be clearly ascertained from a reading of the proposed regulations themselves.

COMMENT: PDH, or professional development hours, should be changed to TDH or technical development hours since only technical courses will be acceptable for continuing competency credit. (One comment received)

RESPONSE: The Board disagrees with this comment. N.J.A.C. 13:40-11.3 defines a non-core course or activity as one which enhances the licensee's skills and knowledge in business practices and ethics within the profession of land surveying. Examples of such courses include: professional conduct, business practices and quality control. These courses are clearly not technical in nature and therefore the Board rejects the comment.

N.J.A.C. 13:40-11.3 Credit hour requirements

COMMENT: The requirement of 24 PDH's will be unduly burdensome both financially and time-wise. (13 comments received)

RESPONSE: The Board does not agree that the 24 PDH's required is unduly burdensome. It is in the interest of the profession and the consuming public to have the most qualified land surveyors performing their trade in New Jersey. The continuing competency program will ensure this. As a result, the Board believes that satisfying the 24 credit hour requirement in a two year period is very reasonable, and will be very beneficial to consumers.

COMMENT: The Board should consider a four year implementation plan which would require voluntary reporting of credits for PDH's for the 1996 renewal period. Along with the 1998 renewal period, registrants would be required to report a minimum of 10 PDH's for the 2000 and 2002 renewal periods. Each period thereafter, 12 PDH's would be required. While the reporting of credits would be voluntary for 1996, credits listed would qualify for carry-over for 1998 when 10 PDH's would be required. (One comment received)

RESPONSE: After careful review of the implementation of the continuing competency program, the Board believes the implementation plan and credit hour requirements listed in N.J.A.C. 13:40-11.3 are easy to understand and provide a good starting point for the program.

COMMENT: Since these rules will probably not be in effect until 1995, the Board should require 12 credits for the 1996 renewal period since the average surveyor will only have 14 months to accumulate the credits. (Three comments received)

RESPONSE: The Board disagrees with this comment. First of all, the law requires land surveyors to obtain 24 credits for the 1994-1996 biennial renewal period. Second, the Board believes the 14 month period is enough time to complete the 24 credits required. In addition, pursuant to N.J.A.C. 13:40-11.3, licensees are permitted to carry over credits accumulated since January 1, 1993 for the period May 1, 1994 to April 30, 1996. This permits licensees to utilize continuing competency credits obtained prior to the programs' inception. For those licensees who do not meet the requirements, the Board will review his or her situation on a case-by-case basis, and decide what action needs to be taken.

COMMENT: For persons registered as both an engineer and a land surveyor, shouldn't the number of PDH units required remain the same, as if the licensee was either an engineer or a land surveyor? (Three comments received)

RESPONSE: There are currently no continuing competency requirements for professional engineers. As a result, the Board cannot address this question adequately.

COMMENT: There has not been any widespread documented incompetency among New Jersey's land surveyors to warrant such burdensome educational regulation. (Seven comments received)

RESPONSE: The purpose of continuing competency statutory requirements is to maintain and ensure competence now and in the future within the land surveying profession, not to address grievances. These rules merely implement the law.

COMMENT: Six PDH's per year should be the requirement. After two or three years, land surveyors will have outstripped the available topics. (One comment received)

RESPONSE: The Board disagrees with this commenter and believes there will be enough course topics in the future. The techniques used in land surveying are always changing and being updated and land surveyors will need to be educated in these new technologies.

COMMENT: Clarify how credits can be obtained and verified. (One comment received)

RESPONSE: The Board believes the relevant methods of obtaining and verifying credit achievement are adequately explained in the regulations, particularly in N.J.A.C. 13:40-11.5, 11.6 and 11.7. Moreover, if questions arise in the future the regulations can always be amended at a later date.

COMMENT: One seven-hour course at the surveyor's conference should satisfy the continuing education requirement for any biennial period. (One comment received)

RESPONSE: The Board believes that one seven-hour course at the surveyor's conference over a two year period would be a woefully inadequate requirement when the overall goal of the program is to maintain and ensure competence within the profession of land surveying.

COMMENT: The required number of PDH's should be lowered to the seven to 10 range. (One comment received)

RESPONSE: The Board has thought long and hard about the credit hour requirements for continuing competency. It is still the Board's belief that 24 PDH's will go far in educating and updating land surveyors in the State so that better land surveying services will be provided for the consumer. The Board believes that seven to 10 credit hours for a two year period would not adequately keep licensees up to date with the current practices and techniques used in land surveying.

N.J.A.C. 13:40-11.4 Approval of course offerings

COMMENT: Elimination of repetitious review of each licensee's renewal application will save the Board time and money. The Board should provide each licensee with an approved list of offerings. (10 comments received)

RESPONSE: The Board does not plan to review applications regarding each licensee's continuing competency requirements. Instead, each licensee upon license renewal will be required to sign a statement stating that he or she has completed the continuing competency requirements and then list the courses. The Board intends to do random audits of licensee records. Furthermore, the Board intends to make available a list of courses that have been approved by the Board.

COMMENT: Does approval of a course last indefinitely? How often do providers have to obtain approval? (One comment received)

RESPONSE: Course approval will be required every two years consistent with biennial renewal. The Board believes it is important to review the courses on a periodic basis checking the appropriateness of the materials and whether the materials are up-to-date.

COMMENT: The licensee urges the Board to consider recognizing courses sanctioned by other recognized professional organizations with a focus on land surveying. Such organizations include: American Congress on Surveying and Mapping, The National Society of Professional Surveyors and the State Surveying Societies. (One comment received)

RESPONSE: The Board believes that each course must be examined before being approved in order to ensure that the course has educational value. Pursuant to N.J.S.A. 45:8-35.3, one of the Board's duties is to approve educational programs offering credits towards continuing professional competency. Simply because courses are sanctioned by a particular organization does not ensure that the courses will have educational value. Board review of each course will help to ensure this.

COMMENT: In subsection (d), professional societies have the ability to charge higher fees for the courses to those persons that are not members of that organization. This is discriminatory and requires "mandatory membership" in order to pay the lesser fee. (Eight comments received)

RESPONSE: The Board does not believe this to be discriminatory. Association members are required to pay dues for membership. One of the benefits of association membership would be to pay lesser fees for seminars and similar programs. Licensees are not precluded from joining an association

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and reaping the benefits of membership. Furthermore, the Board points out that associations are not the only entities that provide courses for continuing competency. Licensees may receive continuing competency credit for courses given by providers other than associations that do not charge a price differential for members and non-members. Lastly, it is important to note that this section provides for a "reasonable differential" in fees. The purpose of this language in the section was to avoid the situation described by the commenter.

COMMENT: In the last sentence of subsection (d) where it states "in no event shall a sponsor, . . . completely exclude from the course or program, any licensee who is not a member of the group or association," the word "completely" should be removed because it implies that someone can be partially excluded. No one should be excluded. (One comment received)

RESPONSE: The Board disagrees with this comment. No licensee will be excluded from course offerings discriminatorily. However, if there are space constraints some licensees may be precluded from attending a particular course at a particular time.

COMMENT: The Board should have the New Jersey Society of Professional Land Surveyors or similar groups approve courses. It is too burdensome and costly for the Board to do this. (One comment received)

RESPONSE: The Board believes it will not be too burdensome for the Board to approve courses. Over time, the Board will make available to all licensees a listing of approved courses that licensees may take to receive continuing competency credit. In addition, it is mandated by statute that the Board approve courses for continuing competency. Furthermore, the Board believes it would be wholly inappropriate for a potential sponsor of continuing competency courses to also be the reviewing/approval body.

COMMENT: Let the practicing land surveyor determine what courses he or she needs to take, and give them credit for the ones they take. (Six comments received)

RESPONSE: Licensed land surveyors in New Jersey are permitted to take the courses they choose, provided the course falls within the framework of the regulations and is Board approved. The Board is required by statute to approve course materials when appropriate.

N.J.A.C. 13:40-11.5 Continuing competency programs and other sources of continuing competency credits

COMMENT: Eliminate N.J.A.C. 13:40-11.5(a)3, 5, 6 and 7. These are not legitimate methods within the profession to obtain credits. (One comment received)

RESPONSE: After careful review, the Board believes the sources of continuing competency credit listed, which include videotapes, teaching, published writings and passing a land surveying licensing examination in another jurisdiction, are legitimate educational methods and should remain available to licensees for continuing competency credit. The Board believes diversity in course materials and methods of instruction helps to ensure that land surveyors will be exposed to the latest practice techniques used in land surveying.

COMMENT: Not enough credit is being awarded for the instruction of courses and the taking of land surveying exams in other jurisdictions. (39 form letters received, one comment received)

RESPONSE: After careful review, the Board believes adequate credit is awarded for teaching and taking exams in other jurisdictions. The Board believes teaching and exam taking to be very valuable learning tools for both the students and the instructor (when teaching). However, diversity in the subject matter and the method of instruction provides for a more well-rounded educational experience and greater exposure to new technologies and developments in land surveying.

COMMENT: Continuing education credits should be given to land surveyors who have actively practiced in the field over a period of years. (39 comments received)

RESPONSE: The Board believes it is imperative that licensees be kept up to date with current practice techniques in the profession of land surveying. Continuing competency achieves this. To award licensees with credits for active practice in the field alone would not ensure that those licensees were kept up to date with today's technology and methods.

COMMENT: Any course or method of improving skills, technical skills, or quality control should be permitted as credit towards the PDH hours. (Four comments received)

RESPONSE: The Board agrees with this comment provided the course is Board approved. This issue is dealt with in the definition of core and non-core courses and is further explained in the credit hour requirements section which states that up to nine of the required 24 credits can be non-core courses.

COMMENT: If membership in a professional society was omitted intentionally as a source of credit, a land surveyor who is a member of a state and/or national society for land surveyors should be given credit for "membership with participation" in one or both of these societies. If the omission was an oversight, credit should be given for "membership with attendance at meetings." (39 form letters received, 30 comments received)

RESPONSE: The Board disagrees with this comment. First, there is no statutory authority for the Board to give continuing competency credit for membership in an association. Second, the Board does not believe that mere membership in an association is worthy of continuing competency credit, as only a small portion of a meeting may pertain to topics the Board would deem to be acceptable credit.

COMMENT: N.J.S.A. 45:8-35.3(a)(3) states that the Board shall approve other equivalent educational programs, including, but not limited to, meetings of constituents and components of land surveying associations recognized by the Board. As a result, the proposed regulations are not in compliance with the enabling legislation. (One comment received)

RESPONSE: The Board disagrees. The construction of the State statute does not give the Board authority to award continuing competency credit for mere attendance at professional association meetings. Rather, the statute refers to equivalent educational programs. The Board is prepared to consider approval of educational programs at professional meetings, where appropriate. See Response directly above.

COMMENT: No credit should be given to licensed officers of any professional society or State Board. (One comment received)

RESPONSE: The Board agrees. No credit is being given to licensed officers of any professional society or State Board.

COMMENT: Credit should be given for municipal board meetings. (Two comments received)

RESPONSE: The Board disagrees with this comment. The Board does not believe that mere attendance at municipal board meetings is worthy of continuing competency credit, as only a small portion of a meeting may pertain to topics the Board would deem to be acceptable credit. In addition, the Board does not have statutory authority to award credit for persons who attend municipal Board meetings.

COMMENT: Any seminar that a licensee takes for PDH's should be presumed acceptable. (One comment received)

RESPONSE: All courses are required to be approved by the Board regardless of whether the course is presumed acceptable. The goal of continuing competency is to maintain and ensure competence now and in the future among licensed land surveyors in New Jersey. Having the Board review and approve course material helps to satisfy this end and enables the Board to meets its statutory requirement.

COMMENT: The competence of an individual should be determined by the licensing exam. (One comment received)

RESPONSE: The Board disagrees. The goal of continuing competency is to maintain and ensure competence now and in the future among licensed land surveyors in New Jersey. The licensing exam on the other hand, tests initial competency.

COMMENT: The Board should pre-approve courses that are required by N.J.S.A. 45:8-35 to become a licensed land surveyor, as continuing competency credit. (One comment received)

RESPONSE: The Board does not agree that a licensee should be able to receive continuing competency credit for the same courses required for initial licensing; to do so would defeat the intent of the continuing competency program, which is to maintain and ensure competence within the profession. However, upon submission the Board will review for approval elective courses that had not been taken by the licensee in order to become licensed, but had been taken subsequent to licensure.

N.J.A.C. 13:40-11.6 Credit calculation

COMMENT: The amount of professional development hours (PDH's) awarded for teaching an initial course seminar or workshop is low compared to the amount of time an instructor devotes to initial preparation. (Three comments received)

RESPONSE: After careful review, the Board believes that the credit awarded for teaching is adequate as stated in the regulations. The Board believes teaching is a very valuable learning tool for both the students and the instructor. However, diversity in the subject matter and the method of instruction provides for a more well-rounded educational experience and greater exposure to new technologies and developments in land surveying.

COMMENT: The maximum amount of PDH's allowed per period for teaching should be 75 percent and not 50 percent since the lower cut-off may deter individuals from being instructors. (Three comments received)

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RESPONSE: The Board believes the credit allocation as it appears in the regulations is fair. Teaching is a very valuable educational tool for both the students and the instructor. The Board believes that 50 percent (or 12 credits per biennial period) is an adequate cap on the number of PDH's a licensee may receive for teaching. Again, diversity in subject matter and method of instruction provides for a more well-rounded educational experience and greater exposure to new technologies and developments in land surveying.

COMMENT: The proposed regulation states "Service as an instructor, or workshop leader: one PDH for each instructional hour." This is inconsistent with 14(d)5 of the NCEES Model Rules which applies a multiplier of two for the first teaching of a course or seminar. (Two comments received)

RESPONSE: The Board is bound by the law that was passed, not the NCEES Model Rules. The enabling law, which the Board must follow, does not mirror the NCEES model law and is not required to.

COMMENT: It is unfair that someone sitting at home or in an office doing research for papers and publications can receive more credit for continuing competency than someone who practices their profession. (One comment received)

RESPONSE: The Board believes there is educational value in research and publications, and there should be continuing competency credit awarded for this. Mere practice of the profession alone is not indicative of continuing competency, as indicated above.

COMMENT: The amount of credit to be allowed for approved correspondence and individual study programs should be 100 percent of the average completion time, not 50 percent. (N.J.A.C. 13:40-11.6(a)5iii) (One comment received)

RESPONSE: The Board believes the credit allocation as it appears in the regulations is fair. Approved correspondence and individual study programs are very valuable educational tools. However, the Board believes that receiving 100 percent of the required credits from these two sources would limit the licensee's exposure to other worthwhile sources of continung competency.

COMMENT: Eliminate N.J.A.C. 13:40-11.6(a)3i and ii. Too much time and expense and monitoring is involved. (One comment received)

RESPONSE: These provisions are necessary. They are credit calculation sections that inform licensees how credits for different continuing competency credit sources will be calculated.

COMMENT: Eliminate N.J.A.C. 13:40-11.6(a)5 through 7. Too much time and expense and monitoring is involved. (One comment received)

RESPONSE: Again, these are credit calculation sections that are necessary in determining how many credits a licensee will receive if he or she completes a course, teaches a course, etc.

COMMENT: Credit should be given for non-technical articles published such as how to manage a surveying business. (One comment received)

RESPONSE: The Board will consider awarding credit for articles published by licensees on a case-by-case basis.

N.J.A.C. 13:40-11.7 Reporting and documenting of PDHs

COMMENT: How will compliance with the continuing competency requirements be monitored and enforced? (One comment received)

RESPONSE: N.J.A.C. 13:40-11.7 requires licensees to document the continuing competency credits accrued. As part of the license renewal process, licensees must certify that the required number of PDHs have been completed and must provide information about the course offerings.

COMMENT: The Board should provide the continuing competency form with the renewal application. (One comment received)

RESPONSE: The Board intends to do so. The form that will be used with the renewal application is currently being drafted.

COMMENT: Subsection (d) which states that the Board will randomly review the continuing competency records of licensees from time to time is ambiguous and should be made clearer. (One comment received)

RESPONSE: The Board disagrees with this comment. This subsection provides that from time to time the Board will conduct random audits of forms containing the continuing competency information. Among the things the Board will examine include the adequacy of the courses taken by the licensee, and whether the courses were approved, and the computation of required credits.

N.J.A.C. 13:40-11.8 Waiver of continuing competency requirement

COMMENT: A retired land surveyor believes age should be addressed in the proposed rule regarding exemption, or at the very least, a relaxing of the required PDH's.

RESPONSE: The Board believes it is paramount that licensed, practicing land surveyors demonstrate continued competency in their profession. However, recent legislation (P.L. 1994, c.171) was passed which creates a new retired license status. A licensed land surveyor who has been licensed for a minimum of 25 years and is 62 years of age or older may apply to the Board for retired license status. Upon the Board's determination that the licensee meets these requirements, the Board places the licensee on the retired status list. A person whose license is retired cannot offer and/or practice land surveying within in the state. Retired licensees would not be required to fulfill the continuing competency requirements as long as they stayed retired.

COMMENT: A land surveyor who is licensed in another state as well as in New Jersey, but who lives and practices land surveying in the other state, wants a waiver of the continuing competency requirements. (One comment received)

RESPONSE: The Board disagrees. Every licensee in New Jersey should be required to demonstrate continued competency regardless of where their principal place of practice is. However, N.J.A.C. 13:40-11.10 permits out-of-State licensees to meet New Jersey's continuing competency requirements upon their completion of the continuing competency requirements of their home state, provided the requirements in the home state are not less than 24 PDH's per biennial renewal period. If the licensee satisfies the criteria for retired license status, he or she would be exempt from the continuing competency requirements.

COMMENT: Subsection (d) should be expanded to contain additional examples of what constitutes "good cause" for granting a waiver. As written, this section at the discretion of the Board could exempt anyone. (One comment received)

RESPONSE: The Board believes the subsection as written is clear as to the types of situations in which the Board will grant a waiver. There must be a hardship for a waiver to be granted. The examples given modify the term hardship. If the need arises in the future, however, the Board can amend the rule to contain additional "good causes" for the Board's granting of a waiver.

N.J.A.C. 13:40-11.10 Out-of-jurisdiction residents

COMMENT: A person licensed in a "public land state" should be required to satisfy the New Jersey continuing competency requirements since the rules and laws are vastly different. (One comment received)

RESPONSE: The Board agrees. Licensees who seek credit for continuing competency courses outside New Jersey will receive credit for those courses that are Board-approved.

N.J.A.C. 13:40-11.12 Responsibilities of program providers

COMMENT: The reference to pre-tests and post-tests is not necessary. Paragraph (a)3 covers this area completely by providing that prerequisites, experience level, etc. be disclosed in advance. Replace ". . . pre-tests for advanced preparation, post-tests . . ." with the word "test." (One comment received)

RESPONSE: The Board disagrees with this comment. This provision simply provides the provider with guidance regarding the different formats which course evaluations can take. The reference to pre-test and post-test evaluations are examples of evaluation models that may be used.

COMMENT: How will the Board ensure that the criteria listed in N.J.A.C. 13:40-11.12 for providers are satisfied? (One comment received)

RESPONSE: N.J.A.C. 13:40-11.11 sets out what information program providers will have to furnish to the Board in order for their courses to be approved. It is mandatory that the providers supply the information for the Board to review. If the Board does not receive the required information, the course will not be approved.

Social Impact Statement

COMMENT: Keeping current, along with competency in the field, is best insured by daily and aggressive hands-on practical experience. (Three comments received.)

RESPONSE: The Board agrees with this comment to a certain extent. However, the Board believes it is also important to keep up-to-date on the latest technology in land surveying, and this is best achieved by continuing competency.

COMMENT: There is no benefit to the individual land surveyor in the continuing education requirements. (Two comments received)

RESPONSE: The Board unequivocally disagrees with this statement. The continuing competency program will help to maintain and ensure competence now and in the future within the profession of land surveying.

COMMENT: Continuing competency will be of no benefit to the public, because the methods currently used will not change. (Two comments received)

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RESPONSE: The Board disagrees. Methods and technologies in land surveying are always changing and it is important to keep all licensed land surveyors in New Jersey up-to-date with these technologies.

COMMENT: The rules as proposed will not guarantee more ethical behavior by surveyors. (One comment received)

RESPONSE: The Board agrees with this comment. These regulations were aimed at continuing competency, not ethical behavior. However, non-core curriculum in ethics may enhance ethical behavior.

Economic Impact Statement

COMMENT: The licensee disagrees with the economic impact statement which states that there will be no undue financial burden. The time spent reporting, preparing, traveling to and attending these seminars may be reflected in increased prices for surveying services. (21 comments received)

RESPONSE: The Board disagrees with the comment. The economic impact statement that was published in the New Jersey Register on November 7, 1994 stated that there would be an economic impact on licensed land surveyors in New Jersey. However, the Board does not believe that there will be an undue financial burden placed on the licensees due to the wide range of course offerings from various sources and differing costs that the Board believes will be made available. It is also important to remember that in light of the costs assumed, licensees will be receiving valuable, up-to-date information that will help them in their practice of surveying.

COMMENT: Estimated total cost to renew a license with continuing competency figured in: range: $1114.32-$5000.00. (Seven comments received)

RESPONSE: At this time there is no projected increase in the initial licensure fee or the biennial renewal fee. While it is impossible for the Board to determine the exact cost of complying with the continuing competency requirements, it is anticipated that the costs will be reasonable. The Board does not believe that the commenters stated price range is a realistic approximation of the costs that will be incurred. Furthermore, the Board expects there to be a number of different course offerings, in addition to other sources of credit which licensees may take. Price differentials between the different offerings are expected also. Although it might be possible to spend a large amount of money taking graduate level courses at a nearby college or university to satisfy the continuing competency requirements, the Board strongly believes that the number of different course offerings available to land surveyors will make satisfaction of the credit requirements very affordable.

COMMENT: The only way to get the required credits is to participate in the Surveyor's Association Annual Conference which is too time consuming and too expensive. (One comment received)

RESPONSE: The Board disagrees. There will be many different ways to get continuing competency credits once the program is implemented.

Regulatory Flexibility Statement

COMMENT: If the Board cannot estimate the number of providers who will apply for program approval, nor the capital costs incurred by each provider, how can the Board then say that they do not anticipate any adverse economic impact? (One comment received)

RESPONSE: The Board believes that the costs of compliance will represent a negligible component of the total business costs of the program sponsor, and that the sponsors will benefit economically from continuing competency.

Miscellaneous Comments

COMMENT: Who is responsible for funding, resourcing, enforcing and monitoring this program? (14 comments received)

RESPONSE: The State Board of Professional Engineers and Land Surveyors is responsible for funding, resourcing, enforcing and monitoring the continued competency program.

COMMENT: There should be public disclosure of all licensee's reports regarding compliance with the continuing education requirements. (One comment received)

RESPONSE: The Board believes it is unnecessary and that it would be an administrative burden to have to advise the public of each licensee's compliance with any specific regulation including continuing competency requirements. The Board has the general statutory duty to oversee the profession and carry out the administrative work necessary for the Board to operate effectively and efficiently.

COMMENT: The new law does not, but should, have regard for the unemployed land surveyor. (One comment received)

RESPONSE: First, the rules are implementing a new law. Second, the purpose of the rules is to maintain and ensure competence now and in the future among the licensed land surveyors in New Jersey. However, persons who suffer hardships may apply for a waiver of the continuing competency requirements pursuant to N.J.A.C. 13:40-11.8.

COMMENT: Are these rules addressing real problematic issues, or are they only benefitting small interest groups? (One comment received)

RESPONSE: The purpose of the rules is to maintain and ensure competence now and in the future among licensed land surveyors in New Jersey. Continuing competency benefits consumers also by ensuring that land surveyors are kept up-to-date on the latest technologies used in the land surveying profession.

COMMENT: Continuing competency should be for the people who are found to be incompetent. It should not presume incompetence. (Two comments received)

RESPONSE: The Board believes the rules do not presume incompetence, but instead seek to maintain and ensure that land surveyors will be competent and kept up-to-date on the latest technologies in land surveying.

COMMENT: What is keeping the course givers from raising the prices of the courses (One comment received)

RESPONSE: The law of supply and demand will regulate the prices of the courses required for continuing competency.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements pertaining to the continuing professional competency are governed by N.J.S.A. 45:8-35.2 and 45:8-35.3 and are not subject to any Federal requirements or standards.

Summary of Agency-Initiated Changes:

In adopting new rules N.J.A.C. 13:40-11 and the amendment to N.J.A.C. 13:40-6.1, the Board of Professional Engineers and Land Surveyors has determined not to adopt N.J.A.C. 13:40-6.1(a)9i, the proposed fee of $50.00 for each course for which a provider seeks approval. The Board determined that the $50.00 per course fee was too excessive for the amount of work that had to be done by the Board regarding approval of courses. In addition, the Board believes the $50.00 per course model may create administrative problems for the Board in tracking course approval and notifying licensees periodically of what courses were approved. The Board will seek to implement a biennial fee for all course sponsors in the near future.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

13:40-6.1 Fee schedule

(a) The following fees shall be charged by the Board:

1.-8. (No change.)

9. Continuing competency program review fee:

i. *[For each course for which a provider seeks approval ..... $50.00]* ***(Reserved)***

ii. For each course for which a licensee seeks approval $10.00

Recodify existing 9.-12. as 10.-13. (No change in text.)

(b) (No change.)

SUBCHAPTER 11. LAND SURVEYORS; CONTINUING COMPETENCY

13:40-11.1 License renewal

The Board shall not renew a land surveyor license for the biennial renewal period commencing May 1, 1996 or any following year unless the licensee submits, with the renewal application, proof that he or she has completed courses of continuing professional competency of the types and number of credits specified in this subchapter. Proof of completion of the required number of professional development hours shall be in the form outlined in N.J.A.C. 13:40-11.7.

13:40-11.2 Definitions

As used in this subchapter, the following terms shall have the following meanings:

"College/unit semester/unit quarter/hour" means the credit for an ABET (Accreditation Board for Engineering and Technology) approved course or other related college course approved in accordance with N.J.A.C. 13:40-11.6(a)1.

"Continuing education unit" (CEU) means the unit of credit customarily used for continuing education courses. One continuing

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education unit equals 10 contact hours of instruction in an approved continuing education course.

"Contact hour" means 50 minutes of in-class instruction and participation.

"Core course/activity" means any course or activity with a clear technical purpose and objective which will maintain, improve or expand skills and knowledge and develop new and relevant technical skills and knowledge in the discipline being practiced by the licensee.

"Non-core course/activity" means any course or activity whose purpose and objective is to enhance the skills and knowledge in ethical and business practices related to the discipline practiced by the licensee. Examples of qualifying non-core courses include professional conduct, business practice and quality control.

"Professional development hour" (PDH) means one contact hour of professional/technical development in seminars, conferences or workshops. A PDH is the common denominator for other units of credit.

13:40-11.3 Credit-hour requirements

(a) Each applicant for license renewal shall be required to have completed, during the preceding biennial period, a minimum of 24 professional development hours (PDHs); except that for the period May 1, 1994 to April 30, 1996, PDHs may have been accumulated from January 1, 1993.

(b) A minimum of 15 PDHs must be earned in core courses/activities.

(c) A maximum of eight PDHs may be carried over into a succeeding biennial renewal period; except that all PDHs earned between January 1, 1993 and April 30, 1994 may be carried over into the May 1, 1994 to April 30, 1996 biennial period.

13:40-11.4 Approval of course offerings

(a) A continuing competency provider may receive approval for a continuing competency course or program pursuant to the provisions of N.J.A.C. 13:40-11.11 and 11.12. Prior to the offering of the course or program, the provider may apply for approval. However, the provider may apply also after the event to eliminate the need for individual licensees to apply under (b) below.

(b) A licensee seeking to take a course or program which the provider has not had pre-approved by the Board may apply to the Board for pre-approval or post-approval of the course or program offering. The licensee shall submit information similar to that which is required to be supplied by course providers pursuant to N.J.A.C. 13:40-11.11(b).

(c) The Board shall maintain a list of all approved programs and courses at the Board offices and shall furnish this information upon request.

(d) An individual, group or association seeking course or program approval may impose a reasonable differential in course or program fees based upon membership within a group or association. However, in no event shall a sponsoring individual, group or association completely exclude from the course or program any licensee who is not a member of the group or association.

13:40-11.5 Continuing competency programs and other sources of continuing competency credits

(a) The Board shall grant credit for successful completion of the following, provided that the course or program meets the criteria of N.J.A.C. 13:40-11.11 and that any other source of credit directly and materially relates to the practice of land surveying:

1. College courses;
2. Continuing education courses;
3. Correspondence, televised, videotaped and other short courses/tutorials;
4. Seminars, in-house courses, workshops and technical programs at professional meetings and conferences;
5. Teaching or instruction in (a)1, 2 and 4 above;
6. Published papers, articles or books authored by the licensee; and
7. A land surveying examination in another jurisdiction.

13:40-11.6 Credit calculation

(a) Credit for PDHs will be granted as follows for each biennial renewal period:

1. Successful completion of approved college level courses;

i. Fifteen PDHs for each semester hour credit awarded by the college; or

ii. Ten PDHs for each quarter hour credit awarded by the college;

2. Successful completion of approved continuing education courses: 10 PDHs for each continuing education unit (CEU);

3. Successful completion of approved correspondence, televised, videotaped and other short courses/tutorials:

i. The amount of credit to be allowed for approved correspondence and individual study programs, including taped study programs, shall be recommended by the program provider based upon one-half the average completion time calculated by the provider after it has conducted appropriate "field tests." Although the program provider must make recommendations concerning the number of credit hours to be granted, the number of credit hours granted shall be determined by the Board; and

ii. Credit for approved correspondence and other individual study programs will be given only in the renewal period in which the course is completed with a successful final examination;

4. Active participation in and successful completion of approved seminars, in-house courses, workshops and technical programs at professional meetings and conferences: one PDH for each hour of attendance at an approved course. Credit will not be granted for courses which are less than one contact hour in duration. Completion of an entire course is required in order to receive any credit;

5. Teaching or instruction in (a)1, 2 and 4 above:

i. Service as an instructor, or workshop leader: one PDH for each instructional hour;

ii. The instructor or workshop leader will be given no credit for subsequent sessions in the same year involving substantially identical subject matter, except that after one year has elapsed the Board may give one additional PDH for each instructional hour of service as an instructor or workshop leader for the initial presentation, provided the original material has been updated; and

iii. The maximum credit given for service as an instructor or workshop leader may not exceed 50 percent of the required PDHs for any biennial renewal period;

6. Authoring published papers, articles or books on technical surveying subjects that contribute to the professional competence of surveyors: one PDH may be requested for each hour of preparation time on a self-declaration basis, not to exceed a total of 25 percent of the biennial requirement. A copy of the publication shall be submitted to the Board with the request for credit; and

7. Successfully passing a land surveying examination in another jurisdiction: one PDH for each hour of examination. All parts of the examination must be passed to receive credit for any part. The maximum credit given for successfully passing a land surveying examination in another jurisdiction may not exceed three PDHs for each biennial renewal period.

13:40-11.7 Reporting and documenting of PDHs

(a) At the time of application for biennial land surveyor license renewal, licensees shall provide, on forms approved by the Board, a signed statement certifying that the required number of PDHs has been completed. The statement shall include where applicable the following:

1. The dates attended;
2. PDHs claimed;
3. The title of the course and a description of its content;
4. The school, firm, or organization providing the course;
5. The instructor; and
6. The course location.

(b) Licensees shall maintain all evidence, as set forth in (e) below, of completion of PDH requirements for two biennial periods after completion and shall submit such documentation to the Board upon request.

(c) Failure to maintain records or falsification of any information submitted with the renewal application may result in an appearance before the Board and, upon notice to the licensee and the opportunity for a hearing, penalties and/or suspension of the license.

(d) The Board will review the records of licensees from time to time, on a random basis, to determine compliance with continuing competency requirements.

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(e) Documentation of continuing competency requirements shall consist of the following:

1. A log showing the type of activity claimed, providing organization, location, duration, instructor's or speaker's name and credits claimed;

2. Attendance verification records in the form of college transcripts, completion certificates, paid receipts, and any other documents supporting evidence of attendance;

3. For publications, submission of the published article; and

4. For teaching, a statement of appropriate authority verifying the activity.

13:40-11.8 Waiver of continuing competency requirement

(a) The Board may, in its discretion, waive continuing competency requirements on an individual basis for reasons of hardship, such as illness or disability, or other good cause.

(b) Any licensee seeking a waiver of the continuing competency requirement must apply to the Board in writing and set forth with specificity the reasons for requesting the waiver. The licensee shall also provide the Board with such additional information as it may reasonably request in support of the waiver request.

(c) A new licensee by way of examination shall have all continuing competency requirements waived for the first renewal period.

(d) A new licensee by way of comity shall be responsible at the first biennial renewal for one PDH for each month since the New Jersey license was issued.

(e) A licensee serving on active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in a calendar year shall have all continuing competency requirements waived for that year.

13:40-11.9 License restoration

The failure on the part of a licensee to renew his or her biennial certificate as required shall not relieve such person of the responsibility to maintain professional competence. At the time of application for restoration, the licensee shall submit satisfactory proof to the Board that he or she has successfully completed all delinquent PDHs. If the total credits required to become current exceeds 30, then 30 shall be the maximum number required. However, an additional 24 PDHs will still be required at the next biennial renewal.

13:40-11.10 Out-of-jurisdiction resident

Licensees who are residents of jurisdictions other than New Jersey must meet the continuing professional competency requirements for their resident jurisdiction. The requirements for New Jersey will be deemed as satisfied when a licensee provides evidence of having met the requirement of his or her resident jurisdiction, provided the requirements are not less than 24 PDHs per biennial renewal period. If the licensee resides in a jurisdiction that has no continuing professional competency requirements, the licensee must meet the requirements of New Jersey.

13:40-11.11 Criteria for continuing competency programs

(a) A course of acceptable subject matter shall directly and materially relate to the practice of land surveying and shall be:

1. A formal course of learning which contributes directly to the maintenance of professional competence of a licensee;

2. At least one instructional hour in duration; and

3. Conducted by a qualified instructor or workshop leader.

(b) A program provider or a licensee seeking Board approval for a course of acceptable subject matter shall submit the following to the Board:

1. The program provider fee (for providers) or program review fee (for licensees) as set forth in N.J.A.C. 13:40-6.1; and

2. Information to document the elements of (a) above, in writing and on a form provided by the Board, including, but not limited to:

i. A detailed description of course content and estimated hours of instruction; and

ii. The curriculum vitae of the lecturer, including specific background which qualifies the individual as a lecturer of repute in the area of instruction.

13:40-11.12 Responsibilities of program providers

(a) Program providers shall:

1. Select and assign qualified instructors for the program;

2. Assure that the number of participants and the physical facilities are consistent with the teaching methods to be utilized;

3. Disclose in advance to prospective participants the course objectives, prerequisites, experience level, content, required advanced preparation, teaching method, and number of PDH or CEU credits involved in the program;

4. Solicit evaluations from both the participants and the instructor at the conclusion of each program. Evaluations may take the form of pre-tests for advanced preparation, post-tests for effectiveness of the program, questionnaires completed at the end of the program or later, oral feedback from participants to the instructor or provider or such other mechanism as may be appropriate to an effective evaluation. Programs should be evaluated to determine whether:

i. Objectives have been met;

ii. Prerequisites were necessary or desirable;

iii. Facilities were satisfactory;

iv. The instructor was effective;

v. Advanced preparation materials were satisfactory; and

vi. The program content was timely and effective;

5. Evaluate the performance of the instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors and advise instructors of their performance;

6. Systematically review the evaluation process to ensure its effectiveness;

7. Furnish to each enrollee a verification of attendance, which shall include at least the following information:

i. The title, date and location of the course offering;

ii. The name and license number of the attendee;

iii. The number of credits awarded; and

iv. The name and signature of officer or responsible party and seal of the organization;

8. Maintain and retain accurate records of attendance for a six-year period; and

9. Retain a written outline of course materials for a six-year period.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PSYCHOLOGICAL EXAMINERS

Persons Requiring Licensure; Member of Other Professional Group Doing Work of a Psychological Nature; Exemption from Licensure; Application; Qualifications to Sit for Examination; Independent Practice; Biofeedback; Employer of Biofeedback Technician; Managed Health Care Plans; Misleading Implications of Licensure; Employment by a Non-Profit Bona Fide Community Organization; Exemption from Licensure; Supervision of Individuals Exempt from Licensure; Affiliated Practitioner; Restrictive Covenants

Adopted Amendments: N.J.A.C. 13:42-1.2, 1.5, 2.1, 7.1, 7.3, 7.5, 7.6 and 9.9

Adopted New Rules: N.J.A.C. 13:42-1.3, 4.5 and 10.16

Proposed: December 5, 1994 at 26 N.J.R. 4738(a).

Adopted: May 10, 1995 by the Board of Psychological Examiners, Jeffrey H. Tindall, Ph.D., President.

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Filed: May 26, 1995 as R.1995 d.332, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3) **and with proposed new rule N.J.A.C. 13:42-7.2A not adopted.**

Authority: N.J.S.A. 45:14B-13, 44 and 45.

Effective Date: June 19, 1995.
Expiration Date: November 1, 1998.

Summary of Public Comments and Agency Responses:

The Board notes that the rules, as published at 26 N.J.R. 4738(a) (December 5, 1994), contained a number of typographical errors, all of them substantively inconsequential and all but one of which occurred in the introductory material. Potentially the most significant was a misdesignation of the address to which public comments should be sent. The address listed was, in fact, that of the State Board of Marriage Counselors, and the Board of Psychological Examiners arranged for any comments received by that agency to be forwarded. Nine comments were submitted (eight written comments, one of which pre-dated rule publication, and one comment by telephone).

The Board also notes that N.J.A.C. 13:42-7.5(a), relating to the limited circumstances when a licensed psychologist may be employed by a general business corporation, contained a typographical error ("along or with" instead of "alone or with"), which error was likely recognized by readers. The Board has corrected the error.

COMMENT: The Hon. Christopher Bateman wrote, indicating that he had been contacted by some psychologists expressing concern regarding the proposed rules. He suggested careful review and consideration of the letters received. He did not identify any specific areas of concern.

RESPONSE: The Board thanks the Assemblyman for his interest. The Board does give careful review to all issues and concerns raised by members of the public, and has done so in its evaluation of all comments submitted to these rules.

COMMENT: N.J.A.C. 13:42-1.3(b). Douglas Haymaker, Ph.D., commented generally on this section, expressing general approval of the proposal and some concern that the expansion of the definition of exempt setting will greatly increase the number of sites where persons holding only a Master's degree will practice. He suggested that the Joint Commission on Health Care Organizations (JCAHO) and the Department of Health have insufficient knowledge and experience to regulate the practice of psychology in such settings. Dr. Haymaker offered numerous suggestions for ways in which he deemed the supervision process could be improved for greater protection of the public receiving services from unlicensed persons in exempt settings. He suggested that unlicensed practitioners be required to inform the client that the practitioner is unlicensed and is practicing under supervision; that agencies employing unlicensed persons in exempt settings be required to offer a client the alternative of seeing a licensed professional; that caseloads of unlicensed practitioners be limited; that the licensed supervisor be required to assure minimum reasonable ratios of supervision time per caseload; that supervisors demonstrate sufficient education, training and expertise in all areas of practice which they supervise; that physicians and social workers not be assumed to possess the training and experience requisite to supervise the special area of psychological testing; and that billings of exempt-setting agencies be required to specify the name and credentials of the actual provider of service in addition to that of the supervisor.

RESPONSE: The Board appreciates Dr. Haymaker's thoughtful suggestions. The Board believes that the number of permissible exempt sites is not likely to be greatly increased as a result of this rule amendment and will, more likely, simply recognize many existing such locations currently unknown to the Board. As all of Dr. Haymaker's additional suggestions would require publication of a new rules proposal, the Board will take them under advisement at present and will give careful consideration to the need and/or authority for further action as information on the actual functioning of the exempt settings comes to Board attention.

COMMENT: N.J.A.C. 13:42-1.3(d)2. This subsection provides alternative definitions which the Board is willing to accept as within the concept of "non-profit bona fide community agency." NJPA objected to inclusion of "a mental health entity (other than a private office) which may be privately owned and operated and which offers outpatient services to the general public." NJPA suggested that this offers an economic discriminatory benefit to such an entity, allowing it to receive an unreasonable economic advantage over private offices by hiring lesser credentialed, unlicensed practitioners, and thereby also providing questionable quality of services. NJPA also suggested that the definition would allow such an entity to contract with a for-profit managed care entity or other third-party payer, thereby circumventing the criterion that the exempted entity be nonprofit.

RESPONSE: The Board has determined to delete the subsection. Its original inclusion had been premised upon a proposed interpretation of State law which specifically allows unlicensed persons to perform work of a psychological nature in certain settings (N.J.S.A. 45:14B-6). Review of the law's exemptions suggests that the Legislature has listed, in separate categories, employment settings in which the services to be provided are (or are declared to be) outside of the Board's jurisdiction; or are already in another governmentally regulated setting; or are necessary for proper education of practitioners; or are so narrow in their impact on the general public as to be incidental to the regulatory purpose; or—most significantly for this rule—are of a nature which generally aids the public welfare by serving disadvantaged persons. Thus, it is the Legislature and not the Board which has set up that "discriminatory" aspect by which the unlicensed entity (presumptively) receives an economic advantage.

In originally proposing this subsection, the Board had been mindful that certain entities do organize as nonprofit social service entities which promote service to underserved populations and, by offering needed services insufficiently available elsewhere, would be deserving of a separate exemption. However, upon further reconsideration, the Board concludes that the proposed subsection might be too open to abuse. The Board is satisfied that the remaining exemptions should be sufficient to cover the kinds of entities the Board believes will serve that special population.

With regard to the concerns expressed pertaining to subcontracting with a managed care entity, the Board states that an entity exempted from these rules would immediately lose that exemption by contracting with a for-profit managed care entity or other third-party payer to provide services to the public.

COMMENT: N.J.A.C. 13:42-1.3(e)2. NJPA notes that the rule subsection would permit a person other than a licensed psychologist to supervise an unlicensed psychologist in a community agency, and points out an apparent conflict with N.J.S.A. 45:14B-6(a)3.

RESPONSE: The Board recognizes that the cited statutory subsection appears to have been honored in the breach since its enactment in 1966. The results of informal inquiry to the Department of Human Services in 1993 suggested that most of the entities considered as "community agencies" and financially supported by the Department are supervised by social workers, with varying levels of tangential affiliation by psychiatrists when medication is considered or prescribed. The relative absence of licensed psychologists as supervisors is ascribed variously to inadequate salary and/or to insufficient numbers interested in clinic work. Indeed, the concern expressed to the Board by the Department of Human Services in 1993 was that it was essential that social workers be enabled to continue their longstanding supervision of numerous entities receiving State financial support. The Board is led to believe that strict enforcement of the statute in its current form would cause severe disruption to large numbers of affected agencies.

The Board also notes that since the 1966 enactment of the law, other licensing categories of mental health professionals have been recognized by the Legislature including, notably, social workers in 1991. The Board is of the view that the primary intention of the Legislature in enacting N.J.S.A. 45:14B-6(a)3 was to require that a community agency have a trained mental health care professional to supervise such unlicensed staff as the employing agency might be compelled, for lack of other resources, to use. Thus, the failure to update the statute may be deemed simply a Legislative oversight. In this vein, pursuant to the Administrative Procedure Act, the Legislature is informed of all proposed rules and has an opportunity to address those of which it disapproves. No legislator has submitted an objection to any specific section of the new rule proposals or has contended that this one is in conflict with the Legislature's basic intent.

Thus, the Board today takes account of the current stage of widespread need, and the shortage or unaffordability of well-trained licensed psychologists to supervise the unlicensed staff in a bona fide community agency. Since the law itself requires that the supervisor be licensed, the Board rule, by requiring simply that the supervisor be "authorized by law" to provide such services, interprets the statute in a professional collegial manner to mean that unlicensed persons can be employed in a bona fide non-profit community agency, provided that such persons are under the supervision of a duly licensed mental health professional. However, to assure that laypersons, who may read only the rule, will be aware the underlying law requires licensure of

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the supervisor, the Board will clarify the sentence to make specific reference to a supervisor who is a practitioner licensed and authorized by law "to render professional mental health services." The Board therefore adopts this subsection with the noted clarification.

COMMENT: N.J.A.C. 13:42-1.5(a). Telephone inquiry was received from David Evans, Esq., questioning why the category list of individuals doing work of a psychological nature consistent with the accepted standards of their respective professions does not specifically list certified drug and alcohol abuse counselors.

RESPONSE: The commenter was advised that the Board found it appropriate to list by name only those categories of individuals who were already practicing as members of a governmentally regulated or otherwise specifically addressed and exempted profession. The separate catch-all paragraph (a)17 exempts any other category of practitioners specifically authorized by law to perform such services consistent with the accepted standards of their respective professions/occupations. The Board believes that this phrasing is appropriate and sufficient to allow certified drug and alcohol counselors to provide management of drug and alcohol abusers, provided that the counselors do not offer to diagnose or treat psychological disorders.

COMMENT: Leon J. Sokol, Esq., writing on behalf of a group calling itself Coalition for Mental Health Professionals, submitted a comment out of time. However, the Board determined to include it in the record. Mr. Sokol noted that the Board had previously voted on May 23, 1994 to stay taking action in regard to its position that psychoanalysis is to be practiced in this State only by practitioners who hold licensure from this Board or who demonstrate exemption pursuant to N.J.S.A. 45:14B-8, and that the title psychoanalyst can be used only as permitted by N.J.A.C. 13:42-1.3 through 1.5. Mr. Sokol repeated his request that the hearing officer who conducted a public hearing for the Board in October 1993 issue a report. Mr. Sokol incorporated by reference all the comments submitted in opposition to the Board's position on psychoanalysis. More generally, he repeated his contention that the Board does not have authority under N.J.S.A. 45:14B-8 to exempt practitioners doing work of a psychological nature unless they are specifically authorized by law to do so consistent with the accepted standards of their respective professions/occupations.

RESPONSE: The Board notes Mr. Sokol's comments for the record and reiterates that the Board is staying its proposal in deference to possible legislative action on bill S.949.

COMMENT: N.J.A.C. 13:42-7.2A. The New Jersey Psychological Association commented that, in its opinion, the proposed affiliated practitioner rule was unclear and inaccurate in its interpretation of the term "fee-splitting". NJPA also asserted that the proposed rule created a conflict with certain tax regulations.

RESPONSE: The Board notes NJPA's objections to N.J.A.C. 13:42-7.2A and has determined to further explore the issues raised. The proposed rule has not, therefore, been adopted.

COMMENT: N.J.A.C. 13:42-7.3. Michael A. Tansey, Ph.D., expressed approval of this section on biofeedback.

RESPONSE: The Board appreciates Dr. Tansey's support. This section makes clear that biofeedback may appropriately be used independently by a licensed psychologist in treatment of a psychological condition. In contrast, biofeedback for palliative or therapeutic treatment of a medical condition cannot be offered and billed as "biofeedback" by a psychologist. Biofeedback offered by a psychologist for a medically diagnosed condition, reasonably believed to be amenable to such treatment, can be offered only in consultation with care by a licensed physician and can be billed by the psychologist only as one component of an integrated psychological treatment program. This clarification should be of assistance to consumers and third party payors who may previously have been billed for biofeedback services as such, which were not part of an integrated psychological treatment plan and which were, thus, outside the licensed scope of practice of a psychologist.

COMMENT: N.J.A.C. 13:42-7.5(a). Dr. Douglas Haymaker expressed some concern that accreditation by JCAHO would be insufficient to assure proper practice of psychology as provided by unlicensed and, perhaps, unlicenseable, personnel working under supervision.

RESPONSE: This section does not authorize the employment of unlicensed practitioners. It addresses only the permissibility of employment of a licensed psychologist by an entity offering health care services, which entity may be a general business corporation, if that entity is accredited by JCAHO or the Department of Health under the special conditions listed in the section.

However, the Board agrees that most of these entities are likely to be exempt settings anyway, providing assistance to underserved populations such as drug or alcohol abusers. Although it would, of course, be desirable to have such entities fully staffed by appropriately trained and licensed personnel, the Board believes that the need currently exceeds the supply. That the Legislature shares this view is suggested by the current exemption from licensure requirements for drug and alcohol abuse counselors in the Practice Act which licenses professional counselors (N.J.S.A. 45:8B-1 et seq.).

COMMENT: Nicholas P. Armenti, Ph.D. suggested that this section should be expanded to permit a licensed psychologist to be employed by a general business corporation which is not yet accredited but is "actively in the process of being accredited" by the JCAHO or by the Commission on Accreditation of Rehabilitation Facilities (CARF). He attached a magazine article briefly discussing the increasing attention paid by providers and payors to attempts to objectify quality service. He suggested that it is often important to have a licensed psychologist as part of the staff of the candidate organization during the accreditation process so that requirements for rendering mental health and substance abuse evaluation and treatment are met, and that such employment will allow a licensee to contribute to the quality of services provided to the consumer during this interim period.

RESPONSE: The commenter's suggestions would make a significant change in the text, requiring publication as a new proposal, and would also severely weaken the substance of the rule. The Board further notes that, while it is generally familiar with the JCAHO process, the commenter provided no information regarding CARF. The Board finds that, since the current rule proposal is undertaking to recognize a new type of entity, it would be prudent to wait and see whether the current wording will, in fact, have the anticipated useful result. As there are significant quality practice and accountability issues inherent in all employment situations controlled by general business corporations, it would be premature to expand the rule further to allow even entities not accredited (and which may never achieve accreditation) to be included among the exempt categories. The Board recognizes that this general area bears watching, and if the current venture appears beneficial to the public, the Board will consider modifications or expansion in the future. Adoption of the section in its current form should not, in itself, have any effect on an entity's ability to develop a health care organization and to seek accreditation, since a psychologist can provide services to it as an independent consultant consistent with N.J.S.A. 45:42-10.14.

COMMENT: N.J.A.C. 13:42-7.6. NJPA objects to what it describes as overly restrictive compensation methods allowed by the Board rule for services performed in a managed health care setting; however, the commenter did not point out what it found overly restrictive or why. NJPA also questioned what public interest would be protected by prohibiting a psychologist from participating in a managed care entity which sought to retain a portion of the fee to cover administrative or other costs.

RESPONSE: The Board's formulation of permissible compensation methods is designed to accomplish two purposes: to avoid the concept and practice of fee-splitting, and also to avoid employment by a general business corporation which is not licensed (and thus not inspected and regulated) by some other agency of State government) for consumer protection. The Board disagrees with the commenter's implied suggestion that a licensed psychologist should be permitted to split his or her professional fee with a managed care entity, presumably in order to encourage use of psychologist-providers. The Board believes that all expenses necessary to running a proper managed care plan should be reflected in the membership fees charged to its corporate or individual clients and in the per capita fees paid to professional providers; indeed, other arrangements might be construed by governmental authorities as a form of kickback in order to induce referrals. The rule does permit a licensed psychologist to directly bill the insured client (who may then seek reimbursement from the managed health care plan); or to bill the plan directly on a per-task or time unit basis. That is all any licensed provider has a reasonable expectation of doing. If the plan is exempt from the provisions of the Peer Review Law (N.J.S.A. 45:14B-31 et seq.), the psychologist may deal directly with the employer/administrative entity in all respects.

Moreover, the Board rule does not prohibit a managed care entity from seeking to pass on to the psychologist (and presumably then on to the patients) a portion of the plan's administrative or other costs. In the absence of any other law prohibiting it, the psychologist may pay a flat regular participation fee to the managed care entity for the purpose of being part of the plan's referral pool. That fee might be calculated to cover a pre-determined share of the plan's administrative and advertising costs, etc. Note that this interpretation is consistent with current rule N.J.A.C. 13:42-10.14(a). The Board therefore finds no reason to modify this subsection and adopts it as published.

COMMENT: N.J.A.C. 13:42-9.9. Leon J. Sokol, Esq., who is noted above, wrote on behalf of the Coalition for Mental Health Professionals, and contended that the Board has no authority to prohibit persons exempt from licensure under the Act from using occupational or professional titles or

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descriptions (such as psychotherapist, therapist, analyst or psychoanalyst), or to deem them misleading.

RESPONSE: The amended text makes no change at all in the substantive wording of the unamended existing rule. The proposal merely adds the words "or other applicable law" in order to recognize that the Legislature has recently enacted laws recognizing two new categories of licenseable mental health practitioners and may contemplate other statutory changes. Although Mr. Sokol had not specifically referred to N.J.A.C. 13:42-9.9 in his comment, it is this section which requires that use of such titles will be deemed a misleading implication of licensure unless clearly qualified by reference to another profession or group exempt from licensure under the Professional Psychology Licensing Act or other applicable law. The Board's authority resides in the Uniform Enforcement Act prohibiting misrepresentation and deception to the public by licensees and also in the authority to seek injunctions against unlicensed practice deceptive to the public. The Board continues to find the disclosure requirement to be strongly in the public interest, making clear to consumers that the advertiser either belongs to a separate category of practitioner licensed and accountable to the government for consumer protection, or belongs to no licensed and accountable practitioner category.

COMMENT: N.J.A.C. 13:42-10.16. NJPA objected to this rule section which prohibits restrictive covenants by or among psychologists. The commenter suggests that, among health care practitioners, only psychologists will be bound by this provision. The commenter suggests that employers who want to enforce restrictive covenants will simply hire non-psychologists to provide services. The commenter also questions why the listed exception to the prohibition—a restriction on the right to practice which is part of the settlement of a controversy between private parties—would be any less detrimental to the public than a restriction as part of an agreement between private parties.

George M. Kapelka, Ph.D., also criticized this section, suggesting that it was unfair to prohibit psychologists from protecting their patient lists from an employed psychologist who might then seek to establish an independent practice taking along what the commenter described as the "hard-earned patients and referral sources," that is, the patients originally provided by the employer. He suggested that it would undermine the existence of group practices.

Kenneth Goldberg, Ph.D. indirectly criticized aspects of this subsection. He expressed no objection to the ban on restrictive covenants or to the ban on splitting fees with an affiliated practitioner. However, he suggested that these provisions would serve to deter the development of new group practices, unless the rule allowed a remaining group member to recover from a department member the initial financial investment in having started the group.

RESPONSE: The Board recognizes the concerns of the objectors but notes the following. A restrictive covenant in a professional contract by definition forbids a willing and duly authorized practitioner from providing services to a willing client, solely for the financial interest of the initial more powerful contracting party. The courts have consistently looked with a wary eye at restrictive covenants as being disfavored for several reasons, including the fact that they have an inherent anticompetitive effect. Such covenants have been enforced only when narrowly drawn and not in violation of other law. In professional covenant cases, more factors are involved. In a seminal case on physician employment restrictive covenants, *Karlin v. Weinberg*, 77 *N.J.* 408 (1978), the New Jersey Supreme Court upheld a post-employment restrictive covenant ancillary to an employment contract but only to the extent it protects legitimate interests of the employer, imposes no undue hardship on the employee, and is not injurious to the public. In performing its analysis, the Court specifically noted that neither the statutes nor the regulations of the State Board of Medical Examiners restrict physicians from entering into restrictive covenants *Id.* at 420. The comment clearly implied that, had the Board enacted a rule prohibiting the conduct by a quasi-legislative finding that such conduct was injurious to the public, the covenant would have been illegal.

The Supreme Court itself, in Rule of Professional Conduct 5.6, has ruled that a restrictive covenant in a professional contract among attorneys is against the public interest and is therefore forbidden. The rule has been consistently applied by the Court in furtherance of the public interests; see *Weiss v. Carpenter & Morrissey*, 275 *N.J. Super.* 393 (App. Div. 1994). The Court's rationale, which is fully adopted by this Board, is further extensively set forth in *Dwyer v. Jung*, 133 *N.J. Super.* 343 (Ch. Div.), *aff'd o.b.* 137 *N.J. Super.* 135 (App. Div. 1975), *Jacob v. Norris, McLaughlin & Marcus*, 128 *N.J.* 10 (1992) and *Katchen v. Wolff & Sampson*, 258 *N.J. Super.* 474 (App. Div.), *certif. den.* 130 *N.J.* 599 (1992). To paraphrase *Jacobs*, the practice of psychology must be carefully governed by ethical considerations rather than by the economic concerns that guide strictly commercial enterprises. No less than clients choosing attorneys, clients of psychologists must be free to select the psychologist of their choice, basing that choice on individual performance and the establishment of a well-merited reputation for professional capacity.

Lack of service continuity can be a detriment to effective psychological treatment. As a result, a psychologist who suddenly terminates professional services without good professional cause can be found liable for abandonment. One method for avoiding unintended deprivation of service is to increase the number of providers in an office. Thus, a psychologist who takes on an employee psychologist typically does so because the employer desires to offer more services than that individual can personally provide. Another method is to establish a group practice; the admission of a practitioner to the group is based upon an anticipation that the new relationship will be professionally productive for a patient. Therefore, a decision by the management of the group practice to sever the therapeutic relationship, for reasons unrelated to the quality of the professional service being rendered by the therapist to the patient, is deemed by the Board to be against the patient's best interests, and therefore forbidden by the Board.

The Board is not persuaded that the ban will deter formation of group practices. Genuine group practices provide numerous benefits to their members. In addition to economic benefits, group practices provide service to a wider range of clientele by the availability of members with special expertise in various areas of practice; the assumed availability of coverage for one's own clients at times of vacation and emergency; and the regular opportunity for collegial peer consultation and counseling on difficult cases and issues. Moreover, the larger financial base of practice facilitates development of an enhanced library, equipment and secretarial resources, continuing education tuition, and averaging of income of individual members. Development of a healthy and ethical group practice is thus desirable irrrespective of private profit motive.

Dr. Goldberg's concern for recoupment of his investment in a group is addressed, in large part, by the rationale provided by the Supreme Court in the *Jacobs* case noted above. The Court made clear that the ban on attorney restrictive covenants does not preclude a reasonable accounting by the departing attorney for the effect of the partner's departure on the firm's value. To quote the Court, "If a partner's departure will result in a decrease in the probability of a client's return and a consequent decrease in prospective earnings, that departure may decrease the value of the firm's goodwill. It would not be inappropriate therefore for partners to take that specific effect into account in determining the shares due a departing partner." *Jacobs* at 20. Similarly, psychologists' group practices could recoup losses to good will by determining the group shares allocated to the psychologist leaving the group practice.

Thus, the formation and existence of group practices will not be undermined by the rule's determination that protection of the best interests of the patient supersedes the best economic interests of the employer or other members of the group. Although the Board recognizes, as did the Court in *Jacobs*, that the financial interest of the practitioners in the professional firm is entitled to concern, the disadvantages to the client resulting from any form of restrictive covenant outweigh any legitimate interest the firm might have.

Further, the Board does not believe that the rule prohibition will be likely to restrict the employment or associational arrangements offered to psychologists by other licensed and responsible practitioners. Potential employers/partners who recognize and value the special training and skills provided by licensed psychologists, will not be deterred from hiring them.

COMMENT: NJPA also questioned the exemption to the prohibition that restricts practice as part of the settlement of a controversy between private parties.

RESPONSE: The Board also notes that the two proposed exemptions were drawn directly from the current Supreme Court rule. With regard to the exemption, N.J.A.C. 13:42-10.61(a)2, the Board agrees the intent is not clear on its face. Inquiry discloses no reported case or opinion on which the Court has construed that exemption, nor is there any available committee report discussing the intent. In these circumstances, and particularly in light of recent cases strongly emphasizing the public policy of assuring full client choice, the Board agrees that the cited exemption is either not helpful or is not clear enough to guide licensee conduct. The Board, therefore, is not adopting N.J.A.C. 13:42-10.16(a)2.

Executive Order No. 27(1994) Statement

The State Board of Psychological Examiners certifies that an Executive Order No. 27 analysis is not required because the rules adopted herein are not

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subject to any Federal standards or requirements and a Federal exceedance analysis is therefore not applicable.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

13:42-1.2 Persons requiring licensure

(a) Persons requiring licensure include all those whose conduct is within the scope of practice set forth in N.J.A.C. 13:42-1.1 and whose practice is not otherwise exempt pursuant to N.J.S.A. 45:14B-6, N.J.S.A. 45:14B-8 and N.J.A.C. 13:42- 1.3 through 1.5, including the following:

1.-3. (No change.)

13:42-1.3 Employment by a non-profit bona fide community organization; exemption from licensure

(a) Pursuant to N.J.S.A. 45:14B-6(a)3, a psychologist employee of a non-profit organization which is a bona fide community agency supported wholly or in major part by public funds is exempted from licensure provided the employee is under the supervision of a supervisor authorized by law.

(b) For purposes of this section, the term "public funds" shall not mean payments by Medicare or Medicaid or other public or private insurance fund on behalf of an individual client to an individual provider (directly or through a professional service corporation) licensed by the Board.

(c) For purposes of this section, the term "non-profit bona fide community organization" shall mean:

1. An entity which is exempt from taxation pursuant to section 501 of the United States Internal Revenue Code and which meets one of the following definitions. The organization shall be:

i. A corporate entity or any community chest, fund or foundation organized and operated exclusively for religious or charitable purposes;

ii. A civic league or organization not organized for profit but operated exclusively for the promotion of social welfare; or

iii. A religious society devoted exclusively to charitable or religious purposes; or

2. An entity which has as its commitment the delivery of mental health services to clients who are amenable to those forms of psychological services customarily provided by the organization and which meets one of the following definitions:

i. The organization receives 50 percent or more of its funding in the form of public monies from a budget line or grant appropriated on a quarterly, twice-yearly, annual or other regular basis; or

ii. The organization has publicly and permanently committed itself to accepting, without numerical restriction, clients whose treatment shall be reimbursed either by Medicaid or Medicare or other public insurance program funding.

(d) Examples of organizations which may be considered bona fide non-profit community organizations under the definition set forth in (c)2 above include*[:

1. A]* private or public non-psychiatric hospital***s*** which *[is]* ***are*** licensed by the New Jersey State Department of Health to provide health and medical care to the general public and which *[has]* ***have*** a designated psychiatric unit*[; and

2. A mental health entity (other than a private office) which may be privately owned and operated and which offers outpatient mental health services to the general public]*.

(e) *[Within 30 days of the effective date of this rule]* ***By July 19, 1995*** or at the time employment of the unlicensed psychologist employee commences, whichever is later, the exempt entity or exempt practitioner shall submit to the Board a notice specifying the following information:

1. The public commitment of the organization and the basis for exemption under this section;

2. The name of the New Jersey licensed psychologist(s) or psychiatrist(s) or other licensed mental health care practitioner authorized by law to *[supervise the offering of psychological services]* ***render professional mental health services*** at the organization's facility; and

3. The name of each unlicensed psychologist employee who does or shall perform psychological services. The unlicensed psychologist employee shall not be an independent contractor.

(f) The exempt entity may submit notice on behalf of the employee(s), and a single annual notice in January of each year shall suffice to retain the exemption for that year. The exempt entity shall update the notice as necessary, and the Board will acknowledge receipt of each notice.

(g) Exemption shall be conditioned upon the employing organization continuing to meet the criteria of this section and N.J.S.A. 45:14B-6 as it may be affected by other applicable law.

13:42-1.5 Member of other professional group doing work of psychological nature; exemption from licensure

(a) The following individuals, who do work of a psychological nature consistent with the accepted standards of their respective professions, are exempt from licensure under the Practicing Psychology Licensing Act provided they do not hold themselves out to the public by any title or description stating or implying that such person is a psychologist or is licensed to practice psychology:

1.-10. (No change.)

11. A school psychologist or guidance counselor who is certified by the New Jersey State Department of Education and who is employed by, and whose services are rendered in or for, a public or private school. No exemption shall be permitted to any school psychologist/counselor not certified by a governmental department of the State of New Jersey and not employed in an exempt setting as set forth in N.J.A.C. 13:42-1.3 and N.J.S.A. 45:14B-6(a)1 and (b) unless otherwise authorized by law;

12. A professional counselor or associate counselor licensed pursuant to N.J.S.A. 45:8B-1 et seq., as amended by P.L. 1993, c.340;

13.-14. (No change.)

15. A licensed physical therapist;

16. A career counselor registered pursuant to N.J.S.A. 34:8-65 et seq.; and

17. Any other category of practitioners specifically authorized by law to perform work of a psychological nature consistent with the accepted standards of their respective professions/occupations.

13:42-2.1 Application; qualifications to sit for examination

(a) An applicant for licensure shall file with the Board an application together with all supporting material. The application form requests a brief summary of educational and employment experience. Supporting material required to be submitted with the application includes official transcripts; an abstract of the applicant's doctoral dissertation as published in Dissertation Abstracts International; and two certificates of good moral character. Documentation of two years of full time or full time equivalent supervised experience in the practice of psychology is required upon the applicant's completion of such experience.

(b)-(i) (No change.)

13:42-4.5 Supervision of individuals exempt from licensure

(a) A psychologist may supervise services of a psychological nature rendered in:

1. A private practice setting by a health care professional exempt from licensure pursuant to N.J.S.A. 45:14B-8; and

2. An exempt non-profit bona fide community organization as defined in N.J.A.C. 13:42-1.3.

(b) The supervisor shall ensure that the exempt supervisee complies with all Board regulatory requirements (including preparation of client records) and with accepted standards of professional and ethical practice of the exempt agency or exempt health care professional.

13:42-4.6 (No change in text.)

13:42-7.1 Independent practice

(a) A licensee practicing independently may employ or otherwise remunerate the following individuals to render professional services only in circumstances where quality control of the employed practitioner's professional practice can be and is lawfully supervised and evaluated by the licensee:

1.-2. (No change.)

(b) (No change.)

(c) A licensee may employ ancillary non-licensed staff, limited to:

1.-2. (No change.)

3. Biofeedback technicians, as defined in N.J.A.C. 13:42-7.3;

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4. Neuropsychometric technicians, as defined in N.J.A.C. 13:42-7.4; and

5. A person engaged in the practice of alcohol, drug abuse or gambling intervention, prevention or treatment who is certified and providing such services in a private setting supervised by the licensee.

(d) (No change.)

*[13:42-7.2A Affiliated practitioner

(a) For purposes of this section, the following definitions apply:

1. "Employer" means a licensed psychologist or a health care provider entity that includes a licensed psychologist as principal, partner or shareholder.

2. "Affiliated practitioner" means a licensed psychologist or other licensed mental health care practitioner exempted by law from the requirement of licensure as a psychologist, who need not be a principal, partner, shareholder or regular employee of the employer and who is retained to perform certain services for the employer.

(b) An employer as defined in this section may employ an affiliated practitioner provided that:

1. The employer has the training and skill sufficient to identify appropriate credentials, licensure and quality of service offered by the affiliated practitioner;

2. The employer complies with the provisions of this section; and

3. The affiliated practitioner performs services for the employer solely on the employer's office premises or in accordance with a plan of supervision for services to institutionalized or housebound clients, approved in advance by the Board.

(c) The employer and an affiliated practitioner who is a licensed psychologist shall be jointly and individually responsible and accountable to the Board for compliance with statutes and rules pertinent to the practice of professional psychology and, where not otherwise specified, with accepted standards of practice in the profession.

(d) An employer who elects to employ an affiliated practitioner shall be required to:

1. Select an affiliated practitioner who is competent to perform the assigned task and to retain the affiliated practitioner to provide only such services as are within that person's lawful scope of practice;

2. Regularly supervise the quality of care provided and the adequacy of client records prepared by the affiliated practitioner;

3. Provide, verbally and in printed form on an information sheet and on each billing statement for services provided by an affiliated practitioner, the following information to the client and third party payor:

i. The full name, professional identification and license number of the affiliated practitioner;

ii. A statement that the affiliated practitioner has been retained to provide services on behalf of the employer and that the affiliated practitioner is not a member or associate of the employer;

iii. A statement that the employer is the primary person/entity responsible for the extent, nature and quality of services rendered; and

iv. A statement that all fees are payable to the employer;

4. Recognize and, to the extent the employer deems the professional services rendered by the affiliated practitioner to be of appropriate quality, encourage an ongoing therapist-client relationship between the client and the affiliated practitioner;

5. Ensure that the bill is issued by the employer and in the employer's name but identifies the affiliated practitioner as the service provider, as required by N.J.A.C. 13:42-10.12;

6. Ensure that the fee the employer charges to the client complies with the rule prohibiting excessive fees (N.J.A.C. 13:42-10.11); and

7. Maintain custody of the original client records and provide the affiliated practitioner with a copy of the records or the portion of the records prepared by the affiliated practitioner.

(e) The employer shall not divide with the affiliated practitioner the fee for services to the client. The employer shall pay the affiliated practitioner on a time-unit basis (for example, per hour or day or other specific unit of time) or by task (for example, testing or evaluation or, if within that practitioner's licensed scope of practice, psychotherapy).]*

13:42-7.3 Biofeedback; employer of biofeedback technician

(a) A licensed psychologist may perform or directly supervise the performance of appropriate biofeedback services in a clinical setting as a component of psychological services. Prior medical evaluation and supervision are not required for this psychological service.

(b) A licensed psychologist shall not diagnose, or offer to provide independent biofeedback treatment for a medical condition, a complaint of pain, or other significant physical symptom or condition that has not been medically evaluated. Following such evaluation, psychological biofeedback treatment may be offered in accordance with (a) above or (c) below.

(c) A licensed psychologist may, in a clinical setting, offer therapeutic or palliative biofeedback services in consultation with a licensed physician, as a component of an integrated psychological treatment program for a medically diagnosed condition reasonably believed to be amenable to such treatment.

Recodify existing (a) and (b) as (d) and (e) (No change in text.)

(f) A licensee with specialized training in biofeedback may employ a biofeedback technician on the office premises, as appropriate to the primary practice of the employer, only under the following circumstances:

1. (No change.)

2. The licensee shall provide direct supervision to the technician, as defined in (e) above; and

3. (No change.)

13:42-7.5 Shareholder or employee of a general business corporation

(a) A licensee may offer health care services as an employee of a general business corporation in this State only in one or more of the following settings. Any such setting shall have a designated director of psychological services or a medical director licensed in this State who is regularly on the premises and who (*[along]* ***alone*** or with other persons authorized by the Department of Health, if applicable) is responsible for licensure verification, credentialing and quality control of the provision of psychological services.

1. The corporation is licensed by the New Jersey Department of Health as a health maintenance organization, hospital, long or short term care facility, or ambulatory care facility. Alternatively, the corporation may be another type of health care facility or corporate health care provider accredited by the Joint Commission on Accreditation of Health Care Organizations. The above accredited corporate employers may include a facility which is a component part of a for-profit corporation employing or otherwise remunerating licensed psychologists, provided that the health care facility/provider has a formal credentialing process and quality control procedures, and service providers are supervised by a psychologist or physician licensed in this State and regularly on the premises.

2.-4. (No change.)

(b)-(d) (No change.)

13:42-7.6 Managed health care plans

(a)-(c) (No change.)

(d) A licensee who is not a full or regular member of a managed health care plan may contract with a plan to render services to an insured person referred by the plan, provided that the licensee retains the authorities listed in (c)1 through 4 above.

(e) The licensee shall submit the bill for services rendered in one of the following ways:

1. To the client-insured;

2. To the managed health care plan, but only if billing is on a per-task or time unit basis and the plan is a professional organization established consistent with N.J.A.C. 13:42-7.1 or 7.2 or a licensed health care corporation as defined in N.J.A.C. 13:42-7.5(a)1.

3. To the employer/administrative entity of the client-insured if the employer is a wholly or partially self-insured health insurance plan or a multiple employer welfare arrangement (MEWA).

13:42-9.9 Misleading implications of licensure

(a) A person not licensed under the Practicing Psychology Licensing Act is prohibited from implying licensure under the Act by using a title or description which, when used in combination with other circumstances, would lead a reasonable person to think that the individual is a licensed psychologist or is authorized to perform professional services which only

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a licensed psychologist can offer. Examples of such conduct, whether for recompense or not, include:

1. (No change.)

2. Using names or professional or occupational titles including "counselor," "psychotherapist," "therapist," "analyst," and related terms or forms unless clearly qualified by reference to another profession or group exempt from licensure under the Act pursuant to N.J.S.A. 45:14B-8 and N.J.A.C. 13:42-1.5 or other applicable law.

13:42-10.16 Restrictive covenants

(a) A licensee shall not participate in offering or making a partnership or employment agreement that restricts the right of a licensed health care professional to practice the licensed profession after termination of the relationship, except*[:

1. A]* ***an*** agreement concerning benefits upon retirement.*[; or

2. An agreement in which a restriction on the right of the licensed health care professional to practice is part of the settlement of a controversy between private parties.]*

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Natural Gas

Gas Pipeline Safety

Notices of Probable Violations, Informal Conferences, Civil Administrative Penalties and Requests for Adjudicatory Hearings Regarding Violations of any Law, Rule, Regulation or Order Pertaining to Natural Gas Pipeline Safety

Adopted Recodification with Amendments: N.J.A.C. 14:11-8 as 14:7-1

Adopted Repeal: N.J.A.C. 14:7-1.1

Proposed: March 6, 1995 at 27 N.J.R. 870(a).

Adopted: May 17, 1995 by the Board of Public Utilities, Herbert H. Tate, President, Carmen J. Armenti and Dr. Edward H. Salmon, Commissioners.

Filed: May 19, 1995 as R.1995 d.303, **without change**.

Authority: N.J.S.A. 48:9-33.

BPU Docket Number: GX95010002.

Effective Date: June 19, 1995.

Expiration Date: March 1, 1998.

Summary of Public Comments and Agency Responses:

Only one response to the proposal was submitted to the Board. Said response was filed on behalf of Public Service Electric and Gas Company (PSE&G) by D.W. Weyant, Manager—Customer and Regulatory Services, Electric Distribution.

COMMENT: The gist of the comment of PSE&G is that the proposal of the Board, published at 27 N.J.R. 870(a), "... further separates the distinction between electric and gas policies regarding underground protection...." Accordingly, PSE&G recommended that the Board examine a uniform gas and electric policy as a substitute for the previously published proposal.

RESPONSE: As indicated in the notice of proposal, these rules have been drafted to allow the Board to carry out the mandates set out in N.J.S.A. 48:9-33. That statute provides for the enforcement of statutes, regulations, rules or orders relating to natural gas pipeline safety by way of monetary and injunctive relief. The purpose of the legislation was to bring New Jersey into compliance with the Federal Natural Gas Pipeline Safety Act of 1968 so as to allow New Jersey to enforce Federal and State safety regulations. Accordingly, the pending rules are in no way connected to the issue of policies regarding the protection of underground electric facilities. That is one of the issues to be addressed in the rulemaking procedure that will relate to the Underground Facility Protection Act, P.L. 1994, c.118, which was signed into law on October 18, 1994.

Executive Order No. 27 Statement

The adopted rules contain standards that are the same as existing Federal standards or requirements. No Federal standard or requirement is exceeded by any provision of the proposal. As noted above, the specific purpose of N.J.S.A. 48:9-33 was to bring New Jersey into compliance with the Federal Natural Gas Pipeline Safety Act of 1968 so as to allow New Jersey to directly enforce Federal safety regulations rather than having to refer suspected violations to the USDOT as was done in the past. The penalties set out in N.J.S.A. 48:9-33 and included in the proposal are identical to those provided for in the Federal legislation. The adopted procedural requirements, which are not prescribed by Federal law, are to be governed by the provisions of the New Jersey Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Full text of the adopted recodification of N.J.A.C. 14:11-8 as 14:7-1 can be found in the New Jersey Administrative Code at N.J.A.C. 14:11-8 pending recodification.

Full text of the adopted amendments and new rules follows:

CHAPTER 7
NATURAL GAS PIPELINES

SUBCHAPTER 1. CONSTRUCTION, OPERATION AND MAINTENANCE OF TRANSMISSION AND DISTRIBUTION NATURAL GAS PIPELINES

Recodify existing N.J.A.C. 14:11-8.1 through 8.8 as 14:7-8.1 through 8.8 (No change in text.)

14:7-1.9 Lines under or adjacent to railroads and highways

(a)-(b) (No change.)

(c) Whenever reasonably possible to avoid doing so, a gas pipeline subjected to or intended to be subjected to pressure in excess of 125 psig, should not be installed beneath and parallel to or within 25 feet of any public hard surface road or street. When such a gas pipeline is so installed the construction shall conform, as far as casing is concerned, to the provisions of N.J.A.C. 14:7-1.8 to the extent reasonably practicable.

(d) Notwithstanding the provisions of N.J.A.C. 14:71.8, all applicable rules of other State or local agencies having jurisdiction which exceed the requirements of said rule shall be effective.

Recodify existing N.J.A.C. 14:11-8.10 through 8.17 as 14:7-1.10 through 1.17 (No change in text.)

14:7-1.18 Purging

Air shall be purged from pipelines classed under N.J.A.C. 14:7-1.3 as Location Class 2, 3, or 4 piping systems by introducing a suitable quantity of inert gas into the pipelines ahead of the combustible gas, or by any other suitable method which prevents formation of an explosive mixture in the pipeline.

Recodify existing N.J.A.C. 14:11-8.19 through 8.33 as 14:7-1.19 through 1.33 (No change in text.)

SUBCHAPTER 2. NOTICES OF PROBABLE VIOLATIONS, INFORMAL CONFERENCES, CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

14:7-2.1 Scope and purpose

This subchapter shall govern the Board's assessment of civil administrative penalties for violations of any law, rule, regulation or order pertaining to natural gas pipeline safety, including violations of the Underground Facility Protection Act (P.L. 1994, c.118) pertaining to natural gas pipeline safety. This subchapter shall also govern the procedures for issuing Notices of Probable Violations, requesting an informal conference, and requesting an adjudicatory hearing on a Notice of Civil Administrative Penalty Assessment or an administrative order.

14:7-2.2 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

"Act" means N.J.S.A. 48:9-33, as amended.

"Board" means the Board of Public Utilities.

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"Gas Division" means the Division of Gas, within the Board.

"Bureau" means the Bureau of Pipeline Safety, within the Gas Division.

14:7-2.3 Notices of probable violations and informal conferences

(a) Upon discovery of a probable violation of any law, rule, regulation or order pertaining to natural gas pipeline safety, including violations of the Underground Facility Protection Act (P.L. 1994, c.118) pertaining to natural gas pipeline safety, the Gas Division may issue a written Notice of Probable Violation to the alleged violator. The Notice of Probable Violation shall state the facts which constitute the probable violation and identify the provision of law, rule, regulation or order violated.

(b) The party cited shall respond to the Notice of Probable Violation in writing to the Gas Division within 14 days of receipt of the Notice of Probable Violation. The response may include a request for an informal conference with the Gas Division and Bureau.

(c) The Notice of Probable Violation may be resolved informally following the alleged violator's response and informal conference, if any; or the staff of the Gas Division and the alleged violater may enter into a written settlement agreement, which shall be presented to the Board for approval.

(d) If the Notice of Probable Violation is not resolved following the informal procedure set forth in (b) and (c) above, the Board may proceed with the Administrative Order and Notice of Civil Administrative Penalty Assessment procedure as set forth in N.J.A.C. 14:7-2.4 and 2.5.

(e) The procedure set forth in this section shall not prevent the Board from issuing an Administrative Order and Notice of Civil Administrative Penalty Assessment pursuant to N.J.A.C. 14:7-2.4 and 2.5 at any time upon discovery of a probable violation of any law, rule, regulation or order pertaining to natural gas pipeline safety, including violations of the Underground Facility Protection Act (P.L. 1994, c.118) pertaining to natural gas pipeline safety, nor shall the procedures in this section be deemed to affect the availability of any other enforcement provision provided for by law, in connection with the probable violation.

14:7-2.4 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty under the authority of N.J.S.A. 48:9-33, for violation of any law, rule, regulation or order pertaining to natural gas pipeline safety, or for violations of the Underground Facility Protection Act (P.L. 1994, c.118) pertaining to natural gas pipeline safety, the Board shall, by means of an Administrative Order and Notice of Civil Administrative Penalty Assessment, notify the alleged violator by certified mail (return receipt requested) or by personal service. The Board may, in its discretion, assess a civil administrative penalty for more than one offense in a single Administrative Order and Notice of Civil Administrative Penalty Assessment or in multiple Administrative Orders and Notices of Civil Administrative Penalty Assessment. The Administrative Order and Notice of Civil Administrative Penalty Assessment shall:

1. Identify the provision of the law, rule, regulation or order violated;
2. Concisely state the facts which constitute the violation;
3. Order such violation to cease;
4. Specify the amount of the civil administrative penalty to be imposed; and
5. Advise the alleged violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 14:7-2.5.

(b) Payment of the civil administrative penalty is due upon receipt by the alleged violator of the Board's Final Order in a contested case or when an Administrative Order and Notice of Civil Administrative Penalty Assessment becomes a Final Order, as follows:

1. If no hearing is requested pursuant to the procedures in N.J.A.C. 14:7-2.5, an Administrative Order and Notice of Civil Administrative Penalty Assessment shall become a Final Order on the 21st day following receipt of the Administrative Order and Notice of Civil Administrative Penalty Assessment by the violator;

2. If the Board denies the hearing request, pursuant to the provisions of N.J.A.C. 14:7-2.5, an Administrative Order and Notice of Civil Administrative Penalty Assessment shall become a Final Order upon receipt by the violator of notice of such denial; or

3. If an adjudicatory hearing is conducted, an Administrative Order and Notice of Civil Administrative Penalty Assessment shall become a Final Order upon receipt by the violator of a Final Order in a contested case.

14:7-2.5 Procedures to request an adjudicatory hearing to contest an administrative order and notice of civil administrative penalty assessment and procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an Administrative Order and Notice of Civil Administration Penalty Assessment issued pursuant to the Act, the alleged violator shall submit the following information in writing to the Secretary of the Board, Attention: Adjudicatory Hearing Requests/Pipeline Safety, Board of Public Utilities, Two Gateway Center, Newark, New Jersey 07102:

1. The name, address and telephone number of the alleged violator and its authorized representative;

2. The alleged violator's defenses, stated in short and plain terms, to each of the Board's findings of fact contained in the Administrative Order and Notice of Civil Administrative Penalty Assessment;

3. An admission or denial of each of the Board's findings of fact contained in the Administrative Order and Notice of Civil Administrative Penalty Assessment. If the alleged violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the alleged violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the alleged violator intends, in good faith, to deny only a part of or qualify a finding, the alleged violator shall specify so much of it as true and material and deny only the remainder. The alleged violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding denied, the alleged violator shall allege the fact or facts as the alleged violator believes it or them to be;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

5. An estimte of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location to accommodate physically disabled persons.

(b) If the Board does not receive the hearing request within 20 days after receipt by the violator of the Administrative Order and Notice of Civil Administrative Penalty Assessment being challenged, the Board shall deny the hearing request.

(c) If the alleged violator fails to include all the information required by (a) above, the Board may deny the hearing request.

(d) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

14:7-2.6 Civil administrative penalty determination

(a) The Board may assess a civil administrative penalty of not more than $25,000 for each violation, for each day the violation persists, up to a maximum of $500,000 for any related series of violations, against each person who violates the provisions of any law, rule, regulation or order relating to natural gas pipeline safety, including violations of the Underground Facility Protection Act (P.L. 1994, c.118) pertaining to natural gas pipeline safety.

(b) In determining the amount of the civil administrative penalty assessed, or an amount agreed upon in compromise, the Board shall consider:

1. The nature, circumstances and gravity of the violation(s);
2. The degree of the violator's culpability;
3. Any history of prior violations;
4. The prospective effect of the penalty upon the ability of the violator to conduct business;
5. Any good faith effort by the violator to achieve compliance;
6. The violator's ability to pay the penalty; and
7. Any other factors justice may require.

(c) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to

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affect the availability of any other enforcement provision provided for by law, in connection with the violation for which the assessment is levied.

(a)

BOARD OF PUBLIC UTILITIES
OFFICE OF CABLE TELEVISION
Regulations of Cable Television
Readoption with Amendments: N.J.A.C. 14:18

Proposed: March 6, 1995 at 27 N.J.R. 873(a).

Adopted: May 23, 1995 by Celeste M. Fasone, Director, Office of Cable Television, with the approval of the Board of Public Utilities, Herbert H. Tate, President, Carmen J. Armenti and Dr. Edward H. Salmon, Commissioners.

Filed: May 25, 1995 as R.1995 d.313, **without change but with the proposal amendments to N.J.A.C. 14:18-3.24 not adopted.**

Authority: N.J.S.A. 48:5A-10.

BRC Docket Numbers: CX94110533, CX94110516, and CX93100439.

Effective Date: May 25, 1995, Readoption;
June 19, 1995, Amendments.

Expiration Date: May 25, 2000.

The purpose of this rulemaking is the readoption, with amendments, of the Office of Cable Television's (OCTV) substantive regulations governing cable television operation and franchising.

The notice of proposed readoption with amendments was published in the New Jersey Register on March 6, 1995, at 27 N.J.R. 873(a) which included notice of a public hearing to be held on March 31, 1995. Notice of the hearing was also published in nine daily newspapers whose general circulation covers the State. In addition, all cable operators and interested parties listed with the OCTV under N.J.A.C. 1:30-3.1(h)3 were mailed a copy of the full proposal. Written comments were accepted through April 5, 1995. The proposal was discussed and approved for adoption with the exception of N.J.A.C. 14:18-3.24, as noted and discussed herein, at the Board's May 17, 1995 public meeting.

Summary of Public Comments and Agency Responses:

Comments were received from:

Francis R. Perkins, Esq., Meyner & Landis, Newark, New Jersey, on behalf of the New Jersey Cable Television Association (NJCTA);

Dennis C. Linken, Esq., Stryker, Tams & Dill, Newark, New Jersey, and Joseph Alberella, Northern New Jersey Area Director of Business Operations, on behalf of Comcast Cablevision;

John Barrett, Vice President of Finance and Administration, on behalf of Garden State Cablevision;

Steven Randall, Eastern Regional Vice President, on behalf of CTEC;

Charles Bartolotta, Vice President and General Manager, on behalf of TKR;

Gerald Clark, Manager of Community Affairs, on behalf of Adelphia Communications;

Richard Palmer, Vice President—Finance, on behalf of Comcast Cable Communications; and

Michael J. Darcy, Program Specialist, on behalf of the New Jersey League of Municipalities.

COMMENTS: All commenters favored the proposed repeals and did not object to the readoption of existing rules. With the exception of the New Jersey League of Municipalities, commenters all expressed opposition to the proposal for a limit on late fee charges. They contend that the $2.00 flat fee proposed would neither recoup the costs of delinquent payments, nor serve as a deterrence to late payment. Comments also indicated confusion concerning the frequency with which a late fee could be assessed on a delinquent balance, ranging from one time per customer to each billing cycle regardless of the age of the balance due.

RESPONSE: Based upon these comments, the Board has determined not to adopt that portion of its proposal concerning late fee limits (proposed N.J.A.C. 14:18-3.24(c)). Rather, the Board has decided to proceed with a future separate rulemaking under BPU Docket Number CX 94110516 which will address the issues and comments on late fee caps raised in this proceeding.

The changes upon adoption merely eliminate, until the initiation of a separate rulemaking proceeding, the proposed new language on late fees set out in N.J.A.C. 14:18-3.24(c) and continue the existing method of calculation of late fees to be stated on the bill by retaining the last sentence in N.J.A.C. 48:3-24(a) which had been proposed for removal as a necessary step in approving the proposed language contained in N.J.A.C. 14:18-3.24(c).

The remainder of the readoption and proposed amendments to N.J.A.C. 14:18 is being readopted without change from the proposal of March 6, 1995, as published at 27 N.J.R. 873(a).

Summary of Hearing Officer's Recommendations and Agency Response:

The March 31, 1995 public hearing was conducted by Commissioner Dr. Edward H. Salmon, who recommended to the Board that the late fee limits of the proposal not be adopted, as discussed above. The hearing record may be inspected by contacting Edward Beslow, Esq., Board of Public Utilities, 2 Gateway Center, Newark, NJ 07102.

Executive Order No. 27 Statement

The readopted rules contain no standards or requirements that exceed standards or requirements imposed by Federal law. To the contrary, the deletion of N.J.A.C. 14:18-3.14(a)1 and 3.18(a)6 is designed to bring Chapter 18 into conformance with present Federal requirements.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 14:18.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

14:18-3.14 Availability of special equipment

(a) The cable television operator shall provide, upon the request of the subscriber, the following equipment:

1. A parental lock to allow subscriber blocking of a specified cable service or channel as required by 47 U.S.C. Sec. 544(d)(2)(A); and

2. Devices to insure adequate access to cable television service for hearing-impaired persons pursuant to 47 U.S.C. Sec. 543(f)(2).

(b) The cable television operator may impose fees to the subscriber for any equipment listed in (a)2 above, which shall not exceed the purchase cost plus overhead.

14:18-3.16 Notice of rate change

(a) If the rates and charges of a cable operator are not subject to prior approval by the Board:

1. A cable TV company implementing a change in its rates shall file with the Office revised tariff sheets reflecting any rate changes at least 30 days prior to the effective date.

2.-3. (No change.)

(b) (No change.)

14:18-3.17 Notice of alteration in channel allocation

(a) Each cable TV company shall file with the Office written notice of an alteration in channel allocation, on a form prescribed by the Director, at least five days prior to the effective date for new additions which do not require rate changes, deletions or cutbacks in other services. For all other changes the operator must provide notice at least 30 days prior to the effective date.

(b) Each cable TV company shall notify its subscribers and affected municipalities of an alteration in channel allocation at least five days prior to the effective date for new additions which do not require rate changes, deletions or cutbacks in other services. For all other changes the operator shall provide notice to the Office at least 30 days prior to the effective date and 30 days prior to the effective date to the subscribers in a manner reasonably calculated to provide such information.

(c) (No change.)

14:18-3.18 Periodic notices to subscribers

(a) The cable operators shall provide annual notice to each subscriber of the following:

1.-4. (No change.)

5. Notice of the availability of devices for hearing impaired as required by N.J.A.C. 14:18-3.14(c); and

6. Notice of the availability of parental lock devices as required by N.J.A.C. 14:18-3.14(b) and 47 U.S.C. §544(d)(2)(A).

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(b)-(c) (No change.)

14:18-3.24 Late fees and charges

(a) In the event a cable television operator imposes an additional fee or charge or penalty to a subscriber for billing balances which are considered past due or late, the cable television operator shall clearly specify the amount of the fee, charge or penalty on the subscriber bill. ***The cable television company shall also specify the method of calculation of the fee, charge or penalty on the bill.***

(b) (No change.)

[(c) Any additional fee, charge or penalty imposed by a cable television operator to a subscriber for billing balances that are past due shall be limited to a one time flat fee of $2.00, which shall be charged to unpaid balance which is 30 days overdue. The cable television operator may not issue separate charges for multiple incidents of overdue payments against any cable subscriber.]

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits
Route U.S. 40
Buena Vista Township, Atlantic County
Adopted Amendment: N.J.A.C. 16:28-1.6

Proposed: April 17, 1995 at 27 N.J.R. 1528(b).

Adopted: May 22, 1995 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: May 26, 1995 as R.1995 d.320, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Effective Date: June 19, 1995.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:28-1.6 Route U.S. 40[1]

(a) The rate of speed designated for the certain parts of State highway Route U.S. 40 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-ii. (No change.)

iii. In Atlantic County:

(1) (No change.)

(2) Buena Vista Township:

(A) (No change.)

(B) Zone 2: 50 miles per hour between Buena-Tuckahoe Road (County Road 557) and 400 feet west of Cedar Avenue (County Road 540) except for a 35 miles per hour school "speed limit" zone when passing through the John C. Milanesi School zone, when children are clearly visible from the roadway during recess or while children are going to or leaving school during opening or closing hours (approximate mileposts 35.21 to 38.12); thence

(C)-(D) (No change.)

(3) (No change.)

---

[1](No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits
Route N.J. 181
Jefferson Township, Morris County
Adopted Amendment: N.J.A.C. 16:28-1.167

Proposed: April 17, 1995 at 27 N.J.R. 1529(a).

Adopted: May 22, 1995 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: May 26, 1995 as R.1995 d.324, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Effective Date: June 19, 1995.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:28-1.167 Route 181

(a) The rate of speed designated for State highway Route 181 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Morris County:

(1) Jefferson Township:

(A) Zone 1: 40 miles per hour between Espanong Road-Weldon Road and Prospect Point Road except for a 25 miles per hour school "speed limit" zone when children are clearly visible from the roadway during recess or while children are going to or leaving the Consolidated School during opening or closing hours. (approximate mileposts 0.00 to 1.45); thence

(B) (No change.)

ii. (No change.)

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(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Restricted Parking and Stopping
Route U.S. 30
Town of Hammonton, Atlantic County
Adopted Amendment: N.J.A.C. 16:28A-1.21

Proposed: April 17, 1995 at 27 N.J.R. 1530(b).
Adopted: May 22, 1995 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: May 26, 1995 as R.1995 d.321, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.
Effective Date: June 19, 1995.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:28A-1.21 Route U.S. 30
(a) The certain parts of State highway Route U.S. 30 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times, except in areas designated as bus stops and other approved parking restrictions.
1.-7. (No change.)
8. No stopping or standing in the Town of Hammonton, Atlantic County.
i. Along the eastbound side:
(1) Beginning at the centerline of Broadway and extending 720 feet easterly therefrom.
(b)-(c) (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Restricted Parking and Stopping
Route N.J. 77
Bridgeton City, Cumberland County
Adopted Amendment: N.J.A.C. 16:28A-1.41

Proposed: April 17, 1995 at 27 N.J.R. 1530(a).
Adopted: May 22, 1995 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: May 26, 1995 as R.1995 d.322, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.
Effective Date: June 19, 1995.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:28A-1.41 Route 77
(a) (No change.)
(b) The certain parts of State highway Route 77 described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:
1. In the City of Bridgeton, Cumberland County:
i. Along the southbound (westerly) side:
(1) Far side bus stops:
(A)-(C) (No change.)
(D) Beginning at the southerly curb line of McCormick Place and extending 105 feet southerly therefrom.
(E) (No change.)
(2) (No change.)
ii.-iii. (No change.)
2.-4. (No change.)
(c)-(f) (No change.)

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Restricted Parking and Stopping
Route N.J. 168
Audubon Park Borough, Camden County
Adopted Amendment: N.J.A.C. 16:28A-1.51

Proposed: April 17,1995 at 27 N.J.R. 1531(a).
Adopted: May 22, 1995 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: May 26, 1995 as R.1995 d.323, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.
Effective Date: June 19, 1995.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:28A-1.51 Route 168
(a) (No change.)
(b) The certain parts of State highway Route 168 described in this subsection shall be designated as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:
1.-10. (No change.)
11. Along the easterly (northbound) side in Audubon Park Borough:
i. Mid-block bus stop:

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(1) Beginning 100 feet north of the northerly curb line of Kennedy Drive and extending 135 feet northerly therefrom.

(c) (No change.)

(a)

REGIONAL OPERATIONS
REGIONS 1, 2, 3, 4
Newspaper Boxes on State Highway Right-of-Way
Readoption with Amendments: N.J.A.C. 16:41B

Proposed: March 20, 1995 at 27 N.J.R. 1157(a).

Adopted: April 21, 1995 by W. Dennis Keck, Deputy Assistant Commissioner for Planning and Development.

Filed: May 25, 1995 as R.1995 d.314, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-21 and 27:7-44.1.

Effective Date: May 25, 1995, Readoption;
June 19, 1995, Amendments.

Expiration Date: May 25, 2000.

Summary of Public Comments and Agency Responses:
No comments received.

NOTE: Except where the Department of Transportation has entered into an agreement with a local or county government transferring the authority to regulate news dispensers on the State's right-of-way to said local or county government, the regulation of news dispensers within the State's right-of-way shall be exclusively controlled by these regulations.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the requirements of this rulemaking are dictated by State statutes and are not subject to any Federal requirements or standards.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:41B.

Full text of the adopted amendments follows:

16:41B-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

. . .

SUBCHAPTER 2. NOTIFICATION PROVISIONS

16:41B-2.1 General provisions

(a) It shall be unlawful for any person to operate, erect, place or maintain, on any State highway right-of-way, any news dispenser without notifying the Department of Transportation, as set forth in this section.

(b) Owners of news dispensers who want to place or continue the existing placement in compliance with this chapter may do so by notifying the Department of Transportation in writing. This one-time notification will include the following information:

1. Intent to place or continue existing placement of news dispensers on State highway right-of-way in accordance with the provisions of this chapter. Individual placement locations do not need to be identified; only the owner's intent to place news dispensers on the State highway right-of-way needs to be established;

2. Name of news dispenser owner;

3. Person to contact with regard to news dispenser placement;

4. Address of owner; and

5. Telephone number of owner and contact person.

(c) Written notifications should be forwarded to the regional office having jurisdiction over the areas in which the news dispensers are located. The regional offices and their jurisdictions are set forth in the Appendix to this chapter.

16:41B-3.1 General requirements

The owner of the news dispenser, upon the placement of a news dispenser within the State highway right-of-way, assumes the unconditional obligation and thereby agrees to defend, indemnify and save harmless the State, its agents, servants and employees from all suits, actions or claims of any character brought because of death or any injury received or sustained by any person or persons or because of any damage received or sustained by any property, irrespective of fault, arising out of the installation, use or maintenance of any news dispenser located on State highway right-of-way, or where such suit, action or claims arise out of such installation, use of maintenance of any news dispenser being a contributing factor to any such injury or damage, or on account of any act, omission, neglect or misconduct by the owner of the news dispenser, its employees, agents, distributors or servants relating to the installation, use or maintenance of any news dispenser within the State highway right-of-way.

16:41B-4.1 General requirements

(a) (No change.)

(b) Placement of news dispensers within the State highway right-of-way is prohibited in the following locations:

1.-7. (No change.)

8. Within three feet of any bus bench, except where such bench is within a bus shelter, in which event this restriction shall not apply provided that the news dispenser is not placed within such bus shelter;

9. Within the public sidewalk curb ramp designed to accommodate persons with disabilities;

10. Where the placement of the newspaper box would reduce the width of the sidewalk to less than three feet; and

Recodify existing 9. as 11. (No change in text.)

(c) Any news dispenser which in whole or in part rests upon, in, or over the State highway right-of-way shall comply with the following standards:

1.-4. (No change.)

5. Any news dispenser maintained on any State right-of-way which creates an imminent, unreasonable hazard to pedestrians or traffic or interferes with the response to an emergency situation by a public officer, fire fighter, ambulance corps or medic, may be summarily relocated to the nearest location not presenting said hazard. Any such relocation shall be reported as soon as reasonably possible to the owner of the news dispenser who shall relocate the news dispenser to any location which is in compliance with the terms of this chapter.

6.-8. (No change.)

16:41B-5.1 General requirements

(a) The continued placement, use and maintenance of news dispensers is conditioned upon compliance with all of the provisions of this chapter. If any of the provisions of this chapter are alleged to have been violated or if the location, installation, or condition of the news dispenser no longer meets with the specifications of this chapter and any amendments thereto, the owner of the news dispenser shall be notified of the non-compliance by registered mail.

(b) (No change.)

(c) The notice shall further state that, upon request by the owner of the news dispenser within 15 days of the receipt of said notice, the official issuing the notice of violation shall meet with the owner of the news dispenser to discuss the basis for the determination that a violation exists and any proposed means of eliminating any violations. That meeting shall take place within 30 days of said request. A request for such a meeting shall stay the further enforcement of this chapter, except in emergency situations as set forth in N.J.A.C. 16:41B-3.1(c)5. Following any such meeting, the official issuing the notice of violation may rescind the notice if it is determined that there was no violation or in the event the alleged violation is otherwise eliminated. The official may also grant time for the correction of any violation upon request.

(d) If, within 30 days after mailing the notice of non-compliance, or within 30 days after the meeting referred to in (c) above, in the event a meeting is requested and does not resolve the dispute in a mutually acceptable manner, or the owner of the news dispenser has failed to remove the news dispenser or otherwise correct the violation or reason for non-compliance, the owner of the news dispenser shall be notified by registered mail that the news dispenser in question will not be permitted to remain in its present location.

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(e) The owner of a news dispenser may appeal from a decision to prohibit a news dispenser to remain in a certain location within 15 days of the date of receipt of a notice informing the owner of the news dispenser that the news dispenser in question will not be permitted to remain in its present location. The owner of the news dispenser shall file a letter of appeal from the decision and request either a hearing in accordance with Department procedures or that the letter of appeal be forwarded by the Department to the Office of Administrative Law as a contested case to be heard in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. In the event an informal Department hearing is requested, any decision therefrom may be referred to the Office of Administrative Law for a de novo hearing. Any appeal shall stay enforcement of this chapter except in emergency situations as set forth in N.J.A.C. 16:41B-3.1(c)5.

(f) If the owner of the news dispenser fails to appeal from the decision to prohibit the news dispenser to remain in its present location, and does not remove or have removed the news dispenser in question within 30 days from the receipt of a notice that the news dispenser will not be permitted to remain in its present location, the news dispenser shall be removed by and stored by the Department of Transportation. The owner of the news dispenser shall be notified by registered mail of the location of the news dispenser and the hours when it may be obtained. The Department of Transportation shall not be liable for any damage to the news dispenser, to any material contained therein, or for any lost sales caused by the removal, transportation or storage of the news dispenser. A charge of $50.00 shall be levied by the Department. If the owner of the news dispenser is unsuccessful on appeal, the owner of the news dispenser shall have 30 days within which to remove the news dispenser. If the news dispenser is not removed within 30 days, the Department of Transportation shall remove it in accordance with the procedures set forth in this subsection.

APPENDIX

Region 1—Netcong
(Hunterdon, Morris, Somerset, Sussex, Warren Counties)
New Jersey Department of Transportation
310 Ridge Plaza
Route 31 and Cregar Road
Clinton, New Jersey 08809
(201) 691-4921

Region 2—Newark
(Bergen, Essex, Hudson, Passaic, Union Counties)
New Jersey Department of Transportation
2 Route 21
Newark, New Jersey 07114
(201) 648-2814

Region 3—Freehold
(Mercer, Middlesex, Monmouth, Ocean Counties)
New Jersey Department of Transportation
Route 79 and 100 Daniels Way
Freehold, New Jersey 07728
(908) 308-4106

Region 4—Cherry Hill
(Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Salem Counties)
New Jersey Department of Transportation
Route 70 at New Jersey Turnpike
Cherry Hill, New Jersey 08034
(609) 795-4725

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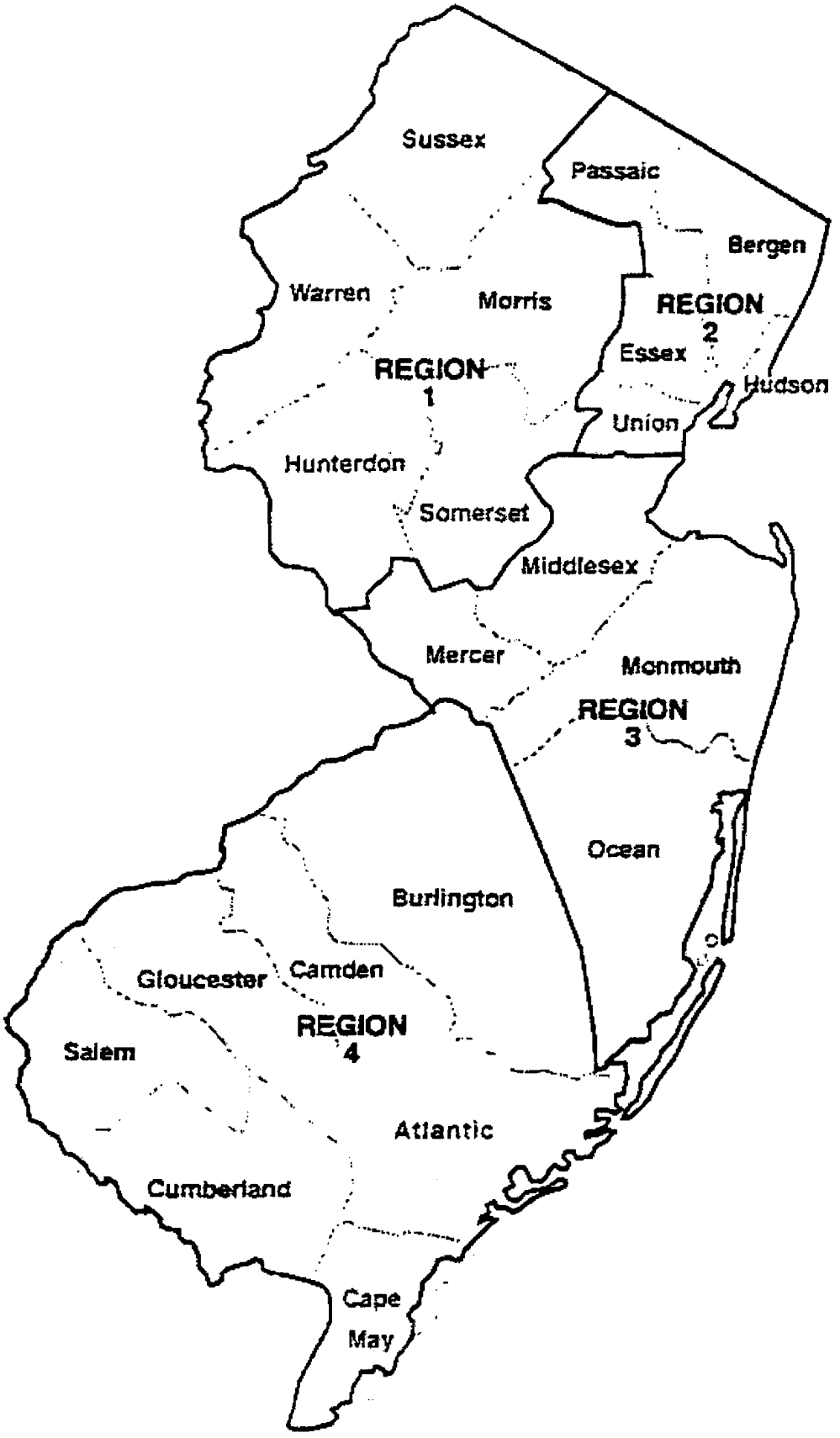

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(a)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF REGULATORY AFFAIRS

Motorist Service Signing for Non-Urban Interstate and Limited Access Highways

Adopted Repeal: N.J.A.C. 16:41D

Proposed: April 3, 1995 at 27 N.J.R.1369(b).

Adopted: May 5, 1995 by W. Dennis Keck, Deputy Assistant Commissioner for Planning and Development.

Filed: May 25, 1995 as R.1995 d.315, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-44, 27:5-10, 27:5-11, 27:5-12, 27:7-21, 39:4-183.1, 39:4-183.6 and 39:4-183.27.

Effective Date: June 19, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

Logo signage is an authorized form of "official sign" under N.J.S.A. 27:5-12, which is part of the 1991 Roadside Sign Control and Outdoor Advertising Act (P.L. 1991, c.413). Placement of such signs is wholly voluntary. If such signs are placed, they are subject to guidelines found in the Manual of Uniform Traffic Control Devices (MUTCD), as published by the United States Department of Transportation. MUTCD guidelines are intended to promote national uniformity in roadside and traffic control signage. Individual states have significant discretion in implementing the provisions of the MUTCD, as they apply to the specific traffic conditions that prevail in their state and specific locality.

(b)

DIVISION OF TRANSPORTATION ASSISTANCE

Employer Trip Reduction Program (ETRP)

Adopted Amendments: N.J.A.C. 16:50
Adopted New Rules: N.J.A.C. 16:50-11 and 12.4
Adopted Repeal: N.J.A.C. 16:50-13.4

Proposed: March 6, 1995 at 27 N.J.R. 827(a).

Adopted: May 23, 1995 by W. Dennis Keck, Deputy Assistant Commissioner, Planning and Development.

Filed: May 26, 1995 as R.1995 d.338, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:26A-1 to 27:26A-14 (P.L. 1992, c.32—(New Jersey Traffic Congestion and Air Pollution Control Act"); N.J.S.A. 27:1A-5, 27:1A-6; and Section 182(d)(1)(B) of the Clean Air Act Amendments (CAAA) of 1990 (42 U.S.C. Section 7511a(d)(a)(B).

Effective Date: June 19, 1995.

Expiration Date: December 6, 1998.

The proposed new rules appeared in the New Jersey Register at 27 N.J.R. 827(a). The comment period closed April 5, 1995. The Department held one public hearing regarding the rule proposal on Tuesday, March 28, 1995 from 1:00 P.M. to 4:00 P.M. in the Multi-Purpose Room, Engineering and Operations Building, New Jersey Department of Transportation, 1035 Parkway Avenue, Trenton, New Jersey.

A total of 84 persons submitted written and/or made oral comments on the proposed rules. Fourteen persons made oral comments at the hearing. Mr. John Mycoff, of the Department's Bureau of Community Involvement, conducted the public hearing. There was no formal recommendation made by Mr. Mycoff to the Department. The Department evaluated oral and written comments submitted at the hearing and received via the mail, and the responses to all comments are included in this adoption.

The hearing record may be reviewed by the public by contacting Ms. Renee Rapciewicz, Deputy Administrative Practice Officer, Bureau of Legislative Analysis, New Jersey Department of Transportation, 1035 Parkway Avenue, Trenton, New Jersey 08625, telephone (609) 530-5720. Any other inquiries for further clarification or guidance should be directed to the Office of Employer Trip Reduction at CN 619, Trenton, NJ 08625; telephone (609) 530-5920.

The following individuals submitted written and/or made oral comments about the proposed rules and are shown with their affiliation where applicable:
Bogert, Patricia, Bergen County Board of Social Services
Boisseau, Elisa, F. Schumacher & Co.
Braun, John, National Exchange Carrier Association
Brillhart, Sandra, TMA Council
Brooks, Eric, FMC Corp.
Cambria, Richard, Trip Reduction Services, Inc.
Chestnut, Edward, Breeze Eastern
Chupa, Steven, Johnson & Johnson
Cieloszyk, Gary, Union Carbide
Cooper, Eli, Cross County Connection TMA
Crowley, George, PMA Group
Daley, Harry P., BASF
Dechen, Linda, City of Vineland
Dogek, Ken, Citizen
Dohlig, Gerry, EM Science
Elston, John, NJ Department of Environmental Protection
Ennis, Barbara, AT&T
Fegelein, Brenda, Texwipe Company
Fischer, Stanley, Paper Plus
Goodwin, Judith, Meridian Nursing Center
Green, Amy, Tingley
Greulich, Jacqueline, Manchester Township
Harrie, David, Nordstrom
Hathorn, L.J., Ford Motor Corp.
Hayes, Anne, Travelers Insurance
Hutchinson, Ronald, ETRP Roundtable
James, David, Union Carbide
Johnson, Walter, William Paterson State College
Kammerer, Allan, Chamber of Commerce of Southern New Jersey
Kastner, Allan, Union High School
Kingsberry, Stephen, Hunterdon Area Rural Transportation
Kipp, Walter, Bristol-Myers Squibb
Kirkham, Rod, General Motor Linden Plant
Kleinz, Eileen, J.C. Penney
Kochel, David, Township of Ocean
Krsnak, Linda, Cumberland County Department of Planning & Development
Leary, Gerald, Borough of Bergenfield
Liberatori, Donna, Mercer Medical Center
Lichtenberger, Frank, Greater Mercer TMA
Linn, Jasmine, Township of Vernon
Mackiewicz, William, Pennsauken Public Schools
MacLean, Tina, Manchester Township
Malloy, Rosemary, Rider University
Manfra, Yvonne, Somerset County Transportation
Manning, William, The Prudential
Marinoff, Steven, Maple Shade Township—Board of Education
McDonough, David L., Crum & Foster Insurance
McNeil, Collin F., PenJerDel Council
Meglis, Edward, NJ Association of School Business Officials
Meyer, John, A high school in northern New Jersey
Morford, James, NJ Food Council
Nelson, Gail, NJ Chapter of ACT
Nelson, Linda Descano, Salomon, Inc.
Nolan, Miriam, Vibration Mountings
O'Connell, Jr., Senator Edward T.
Pineo, Roger, SAS Ambulance
Reed, Pamela, Anadigics, Inc.
Regenye, Daniel E., Ocean County Health Department
Reidy, Terence, Township of Montclair
Rigby, Robert, Jersey City Housing Authority
Rosenberg, Michael, SmithKline Beecham
Rourke, Michael, Greater Atlantic & Pacific Tea Co. Inc.
Satten, Jeff, Meridian Village
Scheurle, Robert E., Bedminster, NJ
Shebes, David, East Jersey State Prison
Shewitz, Deborah, Ohmeda, Inc.
Simon, Conrad, USEPA—Region II

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Sinclair, Dr. James, NJ Business & Industry Association
Smith, Robert, B.F. Goodrich Aerospace
Spears, John, J.C. Penney
Sturgeon, Kathy, ETRP Roundtable
Szabo, John, Bloomfield High School
Tasseff, Ken, Sears Merchandise Group
Tharpe, Robert, Base Ten Systems
Trenton, Albert, NJ Chapter of ACT
Urkowitz, Rhonda, Cross County Connection TMA
Van Dyke, Nora, AAA-Central New Jersey
Verplanck, Joan, NJ State Chamber of Commerce
Vogel, Timothy, Wakefern Foods
Wiederman, Jeanne Page, Edward Don & Co.
Willoughby, Melanie, NJ Retail Merchants Association
Witkowski, Thomas, Sun Chemical
Zagarino, Anthony, Shaw Data Services

Summary of Public Comments and Agency Responses:

Program Policy Issues

COMMENT: Several commenters expressed concern that there have been mixed signals to employers and other affected parties over the past year regarding the status of the program and the obligation of employers to comply.

COMMENT: A commenter states that false reports regarding the Employer Trip Reduction Program (ETRP) have undermined the ability of employers to proceed with the implementation of certified plans. Employees are no longer willing to participate and ETCs are having difficulty convincing management to proceed with the implementation of plans.

RESPONSE: In light of some of the contradictory statements made by United States Environmental Protection Agency (USEPA) in recent months, it is understandable that the business community interprets changes in policy as mixed messages on this program. As long as ETR is a Federal mandate, the Department of Transportation and New Jersey's affected employers will comply. Efforts by the Department and USEPA to provide additional flexibility within the ETR Program should not be misconstrued as making the program voluntary. Instead, those efforts (including these rule changes) are evidence of the Department's efforts to make the program more business-friendly.

COMMENT: A commenter suggests that some substantive action be taken against those companies that still have not filed their certified compliance plan.

RESPONSE: Under State and Federal law, affected employers are required to submit and implement ETR compliance plans. Commissioner Wilson has stated from the outset of this administration that the Department would encourage employers to comply with the ETR program rather than punishing them into compliance. While it is not the Department's intent to penalize any employer that tries but does not achieve the trip reduction target, the Department maintains the right to take action against employers who continue to resist making a good faith effort. Reminders about plan submission requirements were sent in May of this year to those employers who have not yet filed their plans.

COMMENT: A commenter recommends that the NJDOT communicate regularly with affected employers more frequently and in a positive way.

COMMENT: A commenter requests the re-issuance of an ETRP newsletter geared toward affected employers.

RESPONSE: The Department strongly encourages dialogue with employers. The Department maintains communications with employers through the use of the ETR Office telephone hotline, written correspondence and public speaking engagements. The Department also recently issued an ETR newsletter and is committed to a semi-annual publication schedule.

COMMENT: A commenter encouraged the Department to clearly communicate its commitment to reduce traffic congestion and to aggressively pursue and promote economical transportation demand management (TDM) alternatives to reduce the number of vehicles and vehicle miles traveled on New Jersey's highways.

COMMENT: A commenter is concerned that the changes representing a weakening in the State's commitment to reduce congestion as required by the New Jersey Traffic Congestion and Air Pollution Control Act (NJTCAPCA). The mixed signals are resulting in frustration and confusion.

RESPONSE: These rule amendments should not be viewed as a weakening of the State's commitment to reduce traffic congestion. They are intended to foster a better partnership between business and government which will result in successful implementation of the ETR Program. Further evidence of the Department's commitment to reduce congestion is numerous system improvements through the capital program including HOV lanes on I-80 and I-287, transportation demand management activities such as rideshare matching, transportation management associations and park and rides, and NJ TRANSIT's Suburban Transit Initiatives Program known as "Wheels." In addition to the Federally mandated ETR Program, the Department sponsors numerous other programs which reduce the reliance on single-occupant vehicles. These include: POOLMATCH, the Department's computerized rideshare matching system; HOV lanes on I-80 and I-287 (under construction); the Transportation Management Association (TMA) Program, funding non-profit organizations that promote and assist employers in TDM alternatives; establishment of park and ride facilities for ridesharing and public transit; and advocacy of bicycle and pedestrian facilities.

COMMENT: A commenter recommends that DOT state that its policy is to consider favorable employers' suggestions for such additional improvements and to propose additional revisions to the existing regulations to the limit of USEPA's tolerance.

RESPONSE: It is the desire of this Department to make the ETR Program as business-friendly as possible while still adhering to the requirements of the Federal and State laws. The Department solicited ideas for further rule changes in the March 6, 1995 rulemaking proposal and expects to propose additional rule amendments within the next six months.

COMMENT: A commenter requests that since the New Jersey Traffic Congestion and Air Pollution Control Act (NJTCAPCA) recognizes the social costs incurred by congestion, the ETRP rule should also.

RESPONSE: The ETR program was developed in conjunction with the New Jersey business community but under the constraints of very limiting prescriptive USEPA guidance. As a result, the program placed unprecedented pressure and cost upon businesses, employees and their families. USEPA has offered relief to the states in the form of additional flexibility. These rule amendments are intended to take advantage of this policy shift and reduce the costs of employers' programs to more reasonable levels. There remains an understanding that compliance with the revised program has potential impacts on the quality of life in New Jersey, but that every effort will be made to minimize the negative impacts while implementing the program.

COMMENT: A commenter inquired about the projected impact of ETRP on air quality, specifically whether there is data which demonstrates significant improvements in air quality resulting from ETRP.

COMMENT: The USEPA recommends that the State re-evaluate the amount of emission reduction credit attributed to the implementation of the ETRP, which should be submitted to USEPA.

RESPONSE: The amount of emission reduction credit attributed to the ETR Program is being reevaluated and will be submitted to USEPA with the revision to the State Implementation Plan.

General Comments

COMMENT: Several commenters fully supported the proposed rule changes, congratulated the Department for the initiative taken to try to add flexibility to a complicated program, proposing changes that will help large employers to reach their targets, and for listening to comments and concerns raised by affected employers from New Jersey's business community. Commenters considered the proposed rule changes to be more "business-friendly," allowing for greater innovation and creativity for employers.

COMMENT: A commenter congratulated the Department for the thoroughness with which it has handled the implementation of ETRP.

RESPONSE: The Department appreciates the commenters' support.

COMMENT: Three commenters recommended that the program be made voluntary for employers, without strict conformance, deadlines, or heavy fines, with tax abatements for compliance by employers and rebates or refunds for ETRP fees and professional services. Two commenters expressed the concern that ETRP is an unfunded mandate that has significant development and implementation costs without government offset. Further, ETRP costs cannot adversely impact the employers' ability to function as a profit-making enterprise.

RESPONSE: The Department understands the commenters' concerns. However, the Employer Trip Reduction Program (ETRP) is a mandate of the Federal Clean Air Act of 1990. The Department is committed to implementing ETRP in as business-friendly and cost-effective manner as possible. To this end, the Department adopted rules for the Employer Trip Reduction Program Tax Credit (N.J.A.C. 16:50-15) on Monday, February 6, 1995 (see 27 N.J.R. 521(a)). While the Federal government mandates that New Jersey implement an ETRP, the Federal government does not mandate that states provide tax credits to employers who implement such programs. New Jersey has implemented tax credits to employers to provide economic incentives to aid employee participation. The certification and training functions have been

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privatized at the direction of State law to minimize their costs. Further, the ETRP rules continue to allow an employer to apply for a "hardship" waiver, if the development and implementation of ETRP interfere with the employer's ability to continue as a going concern. In instances where a "hardship" waiver is not justified but the financial burden remains an issue, employers are encouraged to consider government-assisted or low cost strategies (such as rideshare matching, on-site sale of transit passes, and alternative work schedules) or fund-raising activities (such as parking charges for drive alones and gift certificates from outside sponsors).

COMMENT: Several commenters expressed the need for regular and reliable public transportation services, especially in areas where it is not available. One commenter expressed concern about the impact of the lack of public transportation in South Jersey on the employers' ability to achieve the desired ETRP goals.

COMMENT: Two commenters added that the proposed designation of a mass transit liaison is a step in the right direction.

RESPONSE: NJ Transit has initiated a pilot program specifically targeted toward suburban employers. The Department encourages employers to contact the NJ TRANSIT Liaison, Louis Capadona at (201) 461-7111, and the local Transportation Management Association (Cross County Connection TMA at (609) 586-8228) for more information on this pilot program. Public transportation is only one of several ETRP strategies available for selection by the employer. Employers should choose eligible strategies that make the most sense for their business needs.

COMMENT: A commenter expressed concern about a perceived inequity that, unlike large employers, small companies in large office complexes are not covered by the regulations, but are equally responsible for polluting in New Jersey.

RESPONSE: Federal law does not require employers with less than 100 employees to comply with the ETRP. Under the New Jersey Traffic Congestion and Air Pollution Control Act, the Department is required to ensure that the minimum Federal standards are not exceeded. Under the proposed rule changes (N.J.A.C. 16:50-3.2(c), 5.1, 8.3, 8.7 and 12.3(e)), the Department allows affected employers to average APOs for their affected work locations in their 1996 plan submissions with both voluntarily-participating non-affected employers and non-affected work locations that are in compliance with appropriate program requirements. Although these changes do not make participation for small employers mandatory as the commenter suggests, credit for voluntary participation is expected to result in a significant incentive for smaller employers and smaller worksites to offer commute options to their employees.

COMMENT: A commenter suggested that towns (municipalities) be required to provide sidewalks as a solution for complying with the 1990 Clean Air Act.

COMMENT: A commenter suggested that legislation be proosed which prohibits lanes of traffic from being closed on major roadways during peak periods.

RESPONSE: Land use decisions in New Jersey are made at the municipal government level rather than at the State level. Municipalities must follow the guidelines provided in the New Jersey Municipal Land Use Law, local regulations, local site plan requirements, and professional traffic engineering and traffic safety standards in determining the appropriateness and cost-effectiveness of sidewalks, as well as the appropriateness of closing traffic lanes for non-emergency reasons. The Department makes every effort to avoid closing traffic lanes during peak periods for construction or maintenance activities, as do most, if not all, municipalities.

COMMENT: Two commenters suggested that clarification is needed about why Cumberland County employers are affected and suggests that the Department look at the impact of the program on Cumberland County employers.

RESPONSE: Cumberland County employers are affected by these rules because USEPA has designated Cumberland County as part of the Philadelphia Regional Air Shed. The 1990 Clean Air Act Amendments provided this authority to USEPA. Since air pollution is known to have no geographic boundaries, the regional designations within the United States made by USEPA are based on air quality data, specifically ozone transport data. The Department agrees that the regional designations have a great impact on the role of employers in achieving compliance with air quality standards; however, states have not been successful in challenging USEPA's authority in this area. To date, Cumberland County employers have registered 67 affected work locations and 56 Cumberland County worksites have submitted initial compliance plans. The 11 worksites that have not submitted initial compliance plans have received approval for an extension to the plan submittal deadline. With a few of the rule amendments, some of the affected worksites may be eligible to apply for an exemption.

COMMENT: Two commenters would like to see regulatory relief and/or additional APO credits for schools. One commenter suggests that ETRP will discourage teachers from being involved in extracurricular activities because of the possible restrictions imposed.

RESPONSE: The Department is not authorized under Federal or State law to grant categorical exclusions to any group of employers. However, recognizing the unique challenges facing public schools that remain ineligible for an exemption, the Department is preparing additional amendments to the ETRP rules that would allow affected public school facilities to receive credit in their APO calculation for the transport of students to the school. The Department expects to propose this amendment within the next six months.

COMMENT: A commenter suggests that special consideration be given to non-profit organizations because they cannot afford to provide the same services as profit-making organizations.

RESPONSE: The Department suggests that affected non-profit organizations take advantage of the low or no-cost strategies, such as rideshare matching, personalized trip planning, guaranteed ride home programs, alternative work schedules, and teleworking, if possible. ETC training is suggested to help with identifying the strategies that best fit the needs of the employer. Financial incentives are not the only strategies that will have a high impact on increasing APO. Yet, many ETCs successfully use creative fundraising techniques to finance their employee incentives. Finally, no employer will be penalized for failing to achieve the APO target, if they make a good faith effort toward compliance.

COMMENT: A commenter recommends that credit be provided to employers that include retrofit devices in their vehicle fleet or that provide retrofit devices for employee vehicles used to commute.

COMMENT: A commenter stated that the rules could do more to promote alternative fuels and clean engines.

RERSPONSE: The Department will consider providing additional credit to employers that install retrofit devices on vehicles used for commuting purposes and may consider their applicability for reducing delivery trip emissions, when the USEPA has issued its conclusions about the benefits of these devices to the environment. It is anticipated that USEPA will conclude its testing within the next six months, until then employers will be encouraged to use alternative fueled or dual fueled vehicles for employee commutation to take advantage of the APO credit.

COMMENT: A commenter would like to see regulatory relief and/or additional APO credit for ambulance services because of the critical nature of the work and the strain that it puts on an employer in striving to achieve the ETRP goal.

RESPONSE: The Department is not authorized under Federal or State law to grant categorical exclusions to any group of employers. The Department appreciates the critical nature of the work involved in ambulance transportation services and recognizes that strategies such as, teleworking and peak shifting, may be the most viable options but still with limitations. The Department expects that, with the shortening of the peak period, there will be more employers eligible for an exemption. Some affected employers have de-centralized their operations to be eligible for exemptions by creating multiple non-affected worksites, often nearer the employees' home locations.

COMMENT: Two commenters support the elimination of the ETRP. One commenter would like to see a subsequent review of the State's public transportation planning.

RESPONSE: ETRP will not be eliminated unless or until there are changes to existing Federal law. The Department has drafted a long range transportation plan called "Transportation Choices 2020," which recognizes the opportunity for numerous transit route expansion projects, but cautions that each project will have to meet strict cost-effectiveness criteria that includes identifying the financial impact of operating costs once the facility is built or the service is started. It encourages economic development in cities, towns, and near transit centers and discourages continued low-density sprawl development in rural or environmentally-sensitive areas. The plan proposes to manage rush-hour congestion in the future by raising bi-state bridge and tunnel tolls during peak travel hours; reducing air pollution caused by automobiles by purchasing and scrapping older cars and trucks; installing new fare collection technology; and installing a statewide transportation complaint hotline for improving incident management.

COMMENT: A commenter requests clarification about whether and how the term "convincingly demonstrates" may have changed with the amendments to the ETRP rule.

RESPONSE: There has been no change made to Section 182(d)(1)(B) of the 1990 Clean Air Act Amendments which requires each affected employer

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to submit an initial compliance plan which shall convincingly demonstrate compliance with the requirements not later than four years after the State's submission of a revision to the State Implementation Plan. USEPA policy flexibilities do not alter this Federal requirement. Further, no change has been made to N.J.A.C. 16:50-9.3(a) which stipulates the requirement for employers to demonstrate the likely effectiveness of the ECO strategies in producing the target APO by the scheduled deadline. Employers must demonstrate the effectiveness of the strategies to an independent certifier, prior to Departmental review, for all initial compliance plans. Generally, the Department has made changes which allow employers to receive APO credit for newly identified strategies which may have been implemented prior to the development of the employer's initial compliance plan and even prior to the enactment of the Federal law. These newly identified strategies suggest a recalculation of the employer's APO, bring the employer closer to the target without increased effort.

COMMENT: A commenter indicated that the Department needs to update its procedures for plan revisions in order to lighten the administrative burden on employers.

RESPONSE: The Department will be issuing new plan forms and instructions after the adoption of these rule amendments. The Department is committed to developing forms for revised plans which are simpler to complete.

COMMENT: Two commenters asked whether the rule changes will be approved by USEPA and whether they are within the limits of the Federal mandate. One commenter asked how employers will be notified of the final adoption of the rule and subsequent USEPA approval.

RESPONSE: After the adoption of the rule amendments with this publication, the State of New Jersey will need to amend its State Implementation Plan. After the review by USEPA of the revisions to the State Implementation Plan, the New Jersey Department of Environmental Protection will be notified of its approval or disapproval. Since many of the rule amendments were suggested by USEPA Administrator Browner, the Department expects that these amendments will be approved. The effective date of the rule amendments will be the date of this publication and all registered affected employers will receive a copy of the published rule after the adoption.

COMMENT: A commenter indicated that the proposed rule changes will have little impact on an employer's ability to reach the APO target.

RESPONSE: The Department recognizes that not every employer will be impacted by the rule amendments but does not anticipate that any of the amendments will make it more difficult for an employer to comply. The Department will continue to seek additional flexibilities for future rule amendments from USEPA.

COMMENT: A commenter suggested that the Transportation Demand Management (TDM) Account outlined in the NJTCAPCA be used to pay the TMA's to conduct plan review on behalf of the Department.

RESPONSE: The NJTCAPCA requires that plans be reviewed for accuracy and efficacy by a certifier that is independent of the employer. The Department is willing to consider grant applications from TMAs for this program, but on this issue the conflict of interest would need to be considered. The dispersal of funds in the TDM account will be considered by the Department after it has determined the new needs of employers when these rule changes have been adopted and implemented.

COMMENT: A commenter stated that there are inconsistencies in the rule language and suggested that the Department eliminate them.

RESPONSE: The Department has made every effort to eliminate inconsistencies and provide clarification in the wording of the rule language. The Department continues to seek specific suggestions from employers about how the program can be improved within the guidelines of Federal and State law.

N.J.A.C. 16:50-2.1 Definitions

COMMENT: Several commenters support the new definition of "peak period."

RESPONSE: The Department appreciates the commenters' support.

COMMENT: Several commenters suggest changing the definition of "peak period" to 7:00 A.M. to 9:30 A.M.

COMMENT: A commenter suggests that the peak period definition be 6:30 A.M. to 9:00 A.M.

COMMENT: A commenter believes that the change in the peak period definition is irrelevant because peak hours depends on the location within the State.

COMMENT: A commenter suggests defining the peak period to mean between 6:31 A.M. and 9:29 A.M.

RESPONSE: USEPA allows states to designate the peak period that captures at least 85 percent of the peak period travel between 5:00 A.M. and 11:00 A.M. Based on new data available to the Department, the proposed definition reflects that flexibility. Additionally, the peak period must apply to the designated affected areas. However, to facilitate a rational implementation of the peak period, the Department agrees with the comment to define the minimal peak period as "6:31 A.M. to 9:29 A.M.".

COMMENT: A commenter supports the change in the peak period definition, but feels that clarification is needed to make it clear that employees arriving before 6:30 A.M. or after 9:30 A.M. are exempt.

COMMENT: Several commenters suggest that the Department allow "grandfathering" for employers who had employees scheduled to report in the original peak period (6:00 A.M. to 10:00 A.M.) so that they can still get credit for "shifting out of the peak".

COMMENT: A commenter suggests that the peak period be an option for the employer, the employer should be allowed to establish the peak period window and have that as part of their plan.

COMMENT: A commenter is concerned that the change in the peak period could eradicate credit some employers may have already achieved by shifting employees out of the peak, since those employees would no longer be included in the APO calculation.

RESPONSE: The Department has considered these comments and intends to allow employers to identify which peak period (6:01 A.M. to 9:59 A.M. or 6:31 A.M. to 9:29 A.M.) will be the peak period for their compliance plan(s). The definition of peak period (N.J.A.C. 16:50-2.1) and all other pertinent sections of the rules will be changed to reflect that employers must choose one of the two defined peak periods and that they must have the same peak period for subsequent plan submittals as identified in their initial plan. This freedom of choice will avoid possible negative impacts on employers from this rule change. An employer that wants to use the new peak period designation must submit either a revised initial plan or their initial plan (on the Department's new standard form) that establishes the new peak period for their work location, calculates their APO for the new peak period, and identifies strategies which will achieve the APO target. Also, a revised plan does not have to be certified. Employees who are scheduled to report before the employer identified peak period or after the employer identified peak period are considered "non-affected" employees and are not included in the APO calculation, unless they were previously "affected" and have been purposefully shifted out of the peak period.

COMMENT: Several commenters suggest that the definition of "teleworking" be changed to allow or include part of a day, such as an employee working at home prior to reporting to the office.

COMMENT: A commenter proposes that an APO credit be given for teleworking for part of a day rather than as a "shifting out of the peak" credit for employees who start work at home and then arrive at work after the peak period.

RESPONSE: The Department agrees and will expand the definition of "Teleworking" at N.J.A.C. 16:50-2.1 to also allow teleworking for part of the day, with the stipulation that as long as the part of the day spent teleworking occurs within the employer identified peak period. That is, the affected employee does not arrive and is not scheduled to report to the affected work location during the designated peak period.

COMMENT: A commenter recommends that the definition of telecommuting be modified to read as any employee whose total one-way commute is less than 10 miles should be counted as arriving in a zero vehicle.

RESPONSE: One of the primary criteria for identifying APO credits is the reduction or elimination of commute trips or vehicle miles traveled (VMT). Allowing employees whose commute trip is less than 10 one way miles to be counted as zero vehicles, regardless of the actual commute mode, reduces neither commute trips no vehicle miles traveled. For many employers, a significant number of affected employees live within 10 miles of the worksite. Such employees are likely candidates for bicycling or walking, which are two modes that are strongly encouraged by the Department.

COMMENT: A commenter suggests that the definition of teleworking should be changed to state that such work may be "instead done at the employee's residence or other place (instead of "work location") that is not more than 10 miles," etc.

RESPONSE: The Department believes that the commenter means that they interpreted "work location" in the teleworking definition to be limited to a work location of the employee's employer. It was never the intent of the Department to limit the possible teleworking location in such a manner. As long as the location is a location where work is performed nearer to the employee's home than the affected work location, it has the impact of

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reducing vehicle miles traveled (VMT). Therefore, the Department does not believe that a change in the definition is necessary.

COMMENT: Several commenters support the change in the definition of "primarily assigned."

COMMENT: A commenter states that the changes in the definition of "primarily assigned" are marginally helpful.

RESPONSE: The Department appreciates the commenters' support of this rule change and hopes that for some employers it will be more than marginally helpful.

COMMENT: A commenter suggests that a clause be added to the end of the definition of "primarily assigned work location" to read as "but not more than 12 hours in a typical week."

RESPONSE: The Department does not feel this clause is needed since the designation of a primarily assigned work location matters only if that employee works 80 or more hours per 28 day period. An employee that does not work more than 12 hours in a typical week would be working less than 80 hours in a 28 day period, and therefore would not be included in that work location's total employee count.

COMMENT: A commenter states that the new definition of "primarily assigned work location" or "primarily assigned location" is confusing.

RESPONSE: It was the Department's intent to be responsive to questions that had been raised since the adoption of the ETR rules regarding "primarily assigned" with the addition of the new definition. The new definition was added to remove the assumption that all employees must be "primarily" assigned to some work location. The original program rules required employers to count all their employees, even those who rarely reported to the worksite (such as field sales representatives). The revised definition on adoption will permit employers to exclude employees who report to the work location two or fewer days per week for any purpose in connection with this program.

COMMENT: A commenter recommends a clarification of "primarily assigned work location" as it applies only to employees who arrive at the worksite two or fewer days per week.

RESPONSE: The Department believes that the commenter misunderstood the proposed definition. The original program rules required employers to count all their employees, even those who rarely report to the worksite (such as field sales representatives). The adopted definition will permit employers to exclude employees who report to the work location two days or less per week. However, the Department will amend the definition on adoption to clarify that an employee is only counted if they physically report to the work location more than two days per week.

COMMENT: A commenter recommends clarifying language that applies to affected employees who physically report to the work location less than two days to read "actually arrive at the work location."

RESPONSE: The definition which includes the language cited by the commenter is part of "primarily assigned." This definition is being added to assist employers in determining if their particular work location is an "affected work location," that is, one with 100 or more employees primarily assigned to the work location. The important aspect of this is the number of employees that are directed to report to the work location. The amendment to the definition or adoption will permit employers to exclude employees who are scheduled to report to the work location two days or less per week. The Department believes that changing the language to "actually arrive" would be inconsistent with other aspects of this rule and with USEPA Guidance.

COMMENT: A commenter suggests replacing "commuting to a work location" with "commuting to and from work" in the definition of carpool.

COMMENT: A commenter suggests replacing "must be commuting to a work location" with "commuting to and from work" in the definition of carpool because it implies that all the occupants must be going to the same work location.

RESPONSE: The Department does not feel any change is needed since the current definition is ". . commuting to and from a work location." Additionally, it was never the intent of the Department that "a work location" would mean the "same" work location.

COMMENT: A commenter recommends changing the word "occupant" to "employee and dependent" to clearly state that persons (occupants) not traveling to work or a day care facility are not counted as carpool or vanpool partners in the APO calculation.

COMMENT: A commenter requests that the Department explain why the word "employee" is changed to "occupant" in the carpool and vanpool definitions.

RESPONSE: The Department proposed to change the word "employee" to "occupant" in both the carpool and vanpool definitions in line with the credit given for dependents dropped off at daycare facilities as carpool/vanpool passengers. If the definition was left as "employee," non-employees such as dependents could not be counted. Regarding the issue of non-employees or non-dependents, N.J.A.C.16:50-7.5 (Calculating work location APO) addresses the inclusion or exclusion of passengers as appropriate.

COMMENT: Several commenters support the inclusion of the dependent care provision.

RESPONSE: The Department appreciates the commenters' support.

COMMENT: A commenter suggest that the definition of "dependent" be broadened to include those who might not be financially dependent on another person, but are dependent on another person to meet daily living needs.

COMMENT: Several commenters suggest that the definition of "dependent" be expanded to allow grandparent to be counted as arriving in a carpool if they drop off a grandchild at a daycare center.

COMMENT: A commenter suggests that the Department consider children caring for an elderly parent who must be dropped off or picked up at a health care facility or day care facility as dependent care.

RESPONSE: It is the intent of the Department to define "dependent" using parameters common to other regulatory programs, for example, Internal Revenue Service for income tax purposes. If the person transported by the employee meets the criteria established in the definition, then that person would be considered a dependent for the purposes of this program, when transported to a care facility as part of the employee's commute.

COMMENT: A commenter supports the dependent care revision but feels clarification is needed due to conflicting interpretations from TMAs and NJDOT. WSill child care/school count in this revision?

COMMENT: Several commenters requested that the Department provide a definition of "care center" or "care facility" in order to clarify the dependent care issue.

COMMENT: A commenter recommends defining "care facility" to include all forms of care of dependents, child care facilities that include before and after school care, and day care operated from an individual's home.

COMMENT: A commenter suggested that "care facility" should include both custodial and educational facilities.

RESPONSE: The Department agrees that a definition of "care facility" should be provided and is adding it to the definition section at N.J.A.C. 16:50-2.1 on adoption. It is the Department's intent that care facilities include day care centers for pre-school age children, babysitting of pre-school age children in a private residence, and facilities that provide custodial services for older persons and/or handicapped citizens. It is not the intent of the Department to expand the common definition of "care facility" to include educational facilities, such as primary and secondary schools. Regarding differing interpretations from various sources, employers and other interested parties are encouraged to contact the Department in writing or to phone (609) 530-5920 for official interpretations.

COMMENT: A commenter supports the concept of dependent care, but feels that the proposed language undermines the intent and spirit of the 1990 Clean Air Act Amendments (CAAA) and the NJTCAPCA.

RESPONSE: The Department does not believe that the dependent care language undermines either the CAAA or the NJTCAPCA because the dependent care issue is one that USEPA Administrator Browner raised herself as a suggestion in a letter to Senator Lautenberg on June 10, 1994. Therefore, it is the Department's intent to provide as much flexibility as possible for affected employers.

COMMENT: A commenter suggests changing the language in the definition of "scheduled to report" by changing "the compensated portion of the work day" to "a compensated portion of the work day" because employees may work for several hours, take an uncompensated break, and then begin to work again later that same day.

RESPONSE: The Department did not intend for the proposed language to be restrictive, will accept the recommendation, and change "the" to "a" as an amendment to the definition on adoption.

N.J.A.C. 16:50-3 Scope and Requirements

COMMENT: A commenter recommends that inclusion in the ETR Program be limited to employers who have 100 or more employees arriving during the peak period.

COMMENT: A commenter suggests that the point of inclusion in the ETRP be a set number of employees arriving during the peak period with no reference to the total number of employees assigned to a given work location.

RESPONSE: The definition of an affected work location in the current ETR rules was adopted from USEPA guidance supplied to States on the development of ETR Program rules.

COMMENT: A commenter recommends that the number of employee's reporting to the specific work location be increased from 100 to 200.

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RESPONSE: The 1990 CAAA set the threshold of 100 or more employees. USEPA Guidance allows states to apply the threshold to single work locations rather than the total number of persons employed by any single employer. USEPA Guidance also allows states to consider exemptions for employers that have less than 33 employees scheduled to report to the work location during the peak period.

COMMENT: A commenter supports the voluntary participation of current non-affectecd employers.

RESPONSE: The Department appreciates the commenters' support.

N.J.A.C. 16:50-6 AVO Zones-APO Targets

COMMENT: A commenter feels the target State APO standards are applied without regard to the nature and scope of the agencies' or firms' missions and mandates as it relates to vehicle use.

RESPONSE: The CAAA requires States to establish APO targets based on the baseline AVO for the area. The 25 percent increase over the baseline was the standard imposed by the 1990 CAAA. The Department feels confident that the data used to develop the AVO baseline was accurate. It was developed by two agencies under contract to the Department, the Eagleton Institute and the Delaware Valley Regional Planning Commission. Neither the CAAA nor USEPA Guidance allows the states to consider the nature or scope of the work performed by businesses when developing the APO targets. However, the Department continues to seek suggestions from employers about how to make the program more responsive to the regulated community, within the mandates of the law.

N.J.A.C. 16:50-7 APO Survey

COMMENT: A few commenters support the inclusion of dual fuel vehicles as zero vehicles in the APO calculation.

RESPONSE: The Department appreciates the commenters' support.

COMMENT: A few commenters support the inclusion of dual fuel vehicles, but recommend that they not count as a zero vehicle.

COMMENT: A commenter recommends that a dual fuel vehicle only count as half a vehicle in the APO calculation.

COMMENT: A commenter suggests that an employer be required to document that the alternative fuel is being used by a dual fuel vehicle in order to get the APO credit.

RESPONSE: The Department appreciates the concerns raised by the commenters; however, it also believes that if an employer or employee goes to the expense of converting or purchasing a dual fuel vehicle, that it is reasonable to expect that the alternative fuel will be used at least half the time, if not more. Additionally, the Department wants to encourage such conversions or purchases. Therefore, the Department will not change the APO credit as suggested and does not intend to require additional verification from employers. Employers will only need to be able to provide verification that a dual fuel vehicle was actually used for the employee's commute to work.

COMMENT: A commenter suggests that multiple fuel vehicles (three or more fuels) get equal credit with dual fuel vehicles, and that a percentage minimum use as a "clean vehicle" be specified.

COMMENT: Several commenters suggest that vehicles fitted with anti-pollution devices to reduce emissions, vehicles retro-fitted with the Vitalizer, and other pollution control devices be counted as zero vehicles along with dual fuel vehicles.

RESPONSE: The Department is reserving its decision regarding the inclusion of retrofit devices, multiple fuel vehicles and other emission reduction devices in the ETR Program until the technology has been more thoroughly researched and tested. If the testing that is currently ongoing within both the NJDOT and at USEPA yields positive results, the Department will propose additional amendments to the ETR Program rules at that time.

COMMENT: A commenter recommends credit for future employee purchases of low emission vehicles. Presently, a "California Car" and an excessive pollution vehicle are counted the same.

RESPONSE: While the Department intends to encourage individuals to purchase newer vehicles in order to reduce the number of older, higher polluting vehicles from the highways, new vehicles which are still powered solely by gasoline are not considered alternative fuel vehicles. Additionally, there may be other emission reduction programs instituted throughout the State that would encourage the use of the "California Car" or other low emission vehicle.

COMMENT: Several commenters suggest that the Department include stationary source emission reductions, such as light conservation or fluorescent retrofits, video conferencing, construction of on-site co-generation facilities, and automated computer/printer shut-off devices, as credit toward reaching the APO goal.

RESPONSE: The Department encouraged employers to utilize all measures at their disposal to reduce emissions and improve air quality. However, the primary goal of the ETR Program, as specified in the 1990 CAAA and the NJTCAPCA is to reduce vehicle trips and vehicle miles traveled. Additionally, the trading or inclusion of stationary source credits is not yet allowed by USEPA. The Department will continue to analyze and consider trading between stationary and mobile sources from this program but does not intend to include such credits at this time.

COMMENT: Several commeners indicated their support for the proposed amendments to allow dependents to be counted as carpool and vanpool passengers in the APO calculation:

RESPONSE: The Department appreciates the commenters' support.

COMMENT: Several commenters recommend that a student dropped off at school, a school bus stop, or prior to the school day, for example, latch key program, be counted as a carpooler.

COMMENT: A commenter suggests that employees receive an APO credit for the transport of non-dependent riders.

COMMENT: A commenter suggests that the Department consider an individual who picks up a child at a care provider after school to count as a carpooler.

RESPONSE: The proposed amendment to include dependents transported to care facilities was done to address continuing comments from employers regarding employees who have young children for whom transportation to a care facility is generally unavailable. School age children usually have access to bus transportation or are within walking distance of the school.

COMMENT: A commenter suggests that the rule be modified so that a dependent transported to a care facility be counted as a carpool occupant only if the dependent has a valid driver's license.

RESPONSE: Because the Department is limiting the application of the dependent care carpool credit to pre-school, nursery schools, or health care facilities, it is unlikely that a dependent with a valid driver's license would be transported to such a facility. Therefore, the Department does not intend to change the criteria for dependents at this time.

COMMENT: Several commenters support the changes to the "survey week" and "typical week."

RESPONSE: The Department is pleased that these changes are supported by those affected by the program.

COMMENT: A commenter recommends that employers be encouraged to survey during similar seasons to ensure compatible comparisons of data.

RESPONSE: Employers are encouraged to survey during similar seasons to ensure compatible comparisons of data, but they are not required to do so. The relaxation on the timing of subsequent surveys was done in order to remove what the Department felt was a regulatory burden for employers. Because of the timing of the first plan submittal, and the untested and unknown aspects of certification, many employers conducted surveys fairly early in 1994 to allow time for certification. With the certification requirement being eliminated for subsequent plan submittals, the Department felt that employers should be released from restrictions that make it more difficult for them to act in good faith.

COMMENT: A commenter requests that the NJDOT give priority to revising the APO survey form.

COMMENT: A commenter requests that surveys and reports be kept to a minimum because surveys take time both from the employer and the employee which is anti-productive.

RESPONSE: The commenter and all affected employers can be assured that the Department has given priority to revising all the forms for the ETR Program to simplify the process. The revised plan forms, the APO survey form, and the "Plan-on-a-disk" and "Survey-on-a-disk" software will be available on or shortly after the time these rule amendments are adopted.

COMMENT: A commenter requests additional clarification of "typical week" and the redefining of "survey week."

RESPONSE: There are two changes to the ETR Program survey process which allow greater flexibility on the part of employers. First, the current requirement which necessitates that employers do follow-up surveys within one month of the anniversary date of the original survey is being eliminated. Employers will be free to choose the week which best serves their needs. Second, the survey week may now be one which either follows a week with a Friday holiday or precedes a week with a Monday holiday. The only restriction in selecting a survey week will be if a holiday actually occurs within the week selected.

COMMENT: A commenter suggests that the Department consider a review process for APO survey reports of voluntarily participating work locations.

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Reporting and documentation standards should be the same as affected worksites.

RESPONSE: The Department is seeking to encourage voluntary participation from non-affected work locations. Establishing a costly review process for voluntary sites would be contradictory to the intent of voluntary participation. The Department will continue to reserve the right to review or audit the activities of both affected employers and voluntary non-affected worksites in order to ensure accuracy and equity.

COMMENT: A commenter suggests that N.J.A.C. 16:50-7.2 should be changed to apply starting in 1996 because 1/1/95 is already past, unless it is intended that newly affected employers be exempt from submittals in 1995.

RESPONSE: The Department agrees that an amendment is needed to clarify that newly affected employers are required to survey and submit plans, and since the May 1, 1994 has already passed, the May 1, 1994 date has been deleted on adoption at N.J.A.C. 16:50-7.2. In addition, since January 1, 1995 has already passed, the term "by January 1 of that year" has been deleted and replaced with "at least 180 days prior to any required submittals." This terminology is being used because it is the same terminology used in the State law at N.J.S.A. 27:26A-5 and is consistent with initial plan submittal schedules, and places the burden on the Department to provide affected employers with sufficient notification for each submittal.

COMMENT: A commenter recommends that the phrase "primarily affected" not be deleted from N.J.A.C. 16:50-7.5(a)2i, rather the word "affected" should be replaced with "assigned."

RESPONSE: The Department agrees and will make the change on adoption in N.J.A.C. 16:50-7.5(a)2i.

COMMENT: A commenter states that flex-time is a strategy many employers have adopted to address congestion. However, unless employees report to work out of the peak period, employers do not get credit for implementing flex-time policies.

RESPONSE: The primary goal of the ETR Program is to reduce vehicle trips and vehicle miles traveled during the peak period. While flex-time is an excellent support mechanism for the selection of commute alternatives, flex-time in and of itself does not reduce vehicle trips. Someone commuting alone to work during the peak period should not be eligible for an APO credit, according to USEPA Guidance.

COMMENT: A commenter supports the provision allowing employees who begin work at home and commute to work after the peak period to be counted as having shifted out of the peak period.

RESPONSE: The Department appreciates the commenter's support.

COMMENT: A commenter requests a clarification to "scheduled to report." It should clearly state that employees scheduled to report during the peak period but who arrive after the peak period and commence work during the peak period are considered affected employees.

COMMENT: A commenter asks how the change in "scheduled to report" affects employees who telework and those who visit a client's location prior to arriving at the worksite, for example, salespersons and home health care professionals.

COMMENT: A commenter requests clarification of "employees who begin the work day at home and after the peak period has ended, commute to work to continue their work day, can be counted as having "shifted out of the peak."

COMMENT: A commenter asks that the Department consider adding a provision that will clarify that employees who begin the work day at home, and after the peak period has ended, they commute to work to continue their work day.

COMMENT: A commenter requests clarification regarding how to count employees who arrive at the work location after the peak period as a continuation of the compensated portion of the day.

RESPONSE: With the addition of the "scheduled to report" definition, employers may be able to take advantage of the "shifting out of peak" credit, if they have an employee who was scheduled to report to the work location during the peak period when the initial survey was conducted and is now directed to either telework from home during the peak or go directly to another site, that is, patient's residence, during the peak then physically report to their employer's work location after the peak period. An employee with this type of schedule is still considered an affected employee and is counted as one employee arriving in a zero vehicle. However, since the Department intends to expand the definition of "teleworking," an employer will only get one credit per employee for either teleworking or shifting out of the peak, not both.

COMMENT: A commenter requests clarification if an employee in 1995 changes their arrival time at the work location purposely to avoid the peak period.

RESPONSE: An employer is eligible for the "shifting out of the peak" credit if an employee's schedule is purposefully changed from being scheduled to report during the peak period during the initial (1994) survey to being scheduled to report either before the peak or after the peak period. An employee with this type of schedule is still considered an affected employee and is counted as one employee arriving in a zero vehicle in the employer's new APO calculation.

COMMENT: A commenter requests that the Department consider allowing employers to count new employees as being shifted out of the peak, where the position the employee fills has historically had a report time during the peak.

RESPONSE: The Department is considering this request. However, the change will not be reflected in this adoption because more examination of the impact of this change is needed.

COMMENT: A commenter recommends an amendment to the way that employees on business travel are counted for the APO, relative to the definition of "scheduled to report." In the case of business travel, the employer is specifically directing the employee to report elsewhere. The commenter would recommend that on those days at the beginning and end of a trip when the employee is traveling to or from another assigned work location, he or she should be counted as arriving at work by whatever mode was used for the trip. However, on any day, in the middle of the trip, when the employee is conducting business out of the affected area for the entire day (and therefore not contributing to traffic or air pollution at all), he or she should be counted in the APO as arriving in a zero car.

RESPONSE: The Department believes that the commenter is recommending an APO credit that is already provided. The definition of "scheduled to report" and the intended application with regard to shifting employees out of the peak would allow employers to specifically direct employees to begin their compensated portion of the work day at home or another location (including a client's worksite) and then be "scheduled to report" at the employer's affected work location after the peak period. In this instance, the employee would be counted in the APO calculation as arriving in a zero vehicle.

COMMENT: A commenter requests that they receive double credit for employees that call out sick during or for limiting the number of employees coming to the worksite due to vehicle maintenance and liability problems, because their commutes are eliminated.

RESPONSE: Within USEPA Guidance, the calculation of a worksite's APO should exclude those employees who "did not report" during the survey week due to sick leave, vacation, etc. Because it is assumed that the survey is conducted during a "typical week," the instances of sick leave, vacation or other benefit time are generally the same each week. Therefore, excluding employees who did not report from the APO calculation seems the most equitable for all employers. Additionally, there is no process in the ETR Program or the APO calculation that allows for "double credit" for any trip reduction initiative.

COMMENT: A commenter recommends that the Department provide a credit for accepting deliveries only out of the peak period.

RESPONSE: The Department is continuing to research and develop additional ETRP rule amendments that would provide additional credits for employers and still work toward the goal of reducing vehicle trips and vehicle miles traveled, particularly during the peak period. The Department solicited ideas for further rule changes in the March 6, 1995 rulemaking proposal and expects to propose additional rule changes within the next six months.

COMMENT: A commenter suggests that students be included in the APO formula.

RESPONSE: Recognizing the unique challenges facing public schools, the Department is preparing additional amendments to the ETRP rules that would allow affected public school facilities to take credit in their APO calculation for the transport of students to the school. The Department plans to propose this amendment within the next six months.

N.J.A.C. 16:50-8 Compliance Plans and APO Reports

COMMENT: A commenter does not feel that experience and educational qualifications for an ETC trainer should be limited to a degree or experience in adult education and would like to see N.J.A.C. 16:50-8.9(c) amended.

RESPONSE: The Department feels that the experience and educational qualifications proposed for ETC trainer candidates are commensurate with the duties and responsibilities of an ETC trainer. To relax the requirements would jeopardize the quality of education provided to ETC's.

COMMENT: A commenter recommends that training be provided to newly designated ETC's in the form of a free workshop offered by local TMA's or NJDOT to introduce them to the program and process.

RESPONSE: The Department trained 57 individuals, some of which are associated with State sponsored TMA's, to provide ETC training courses. Although ETC training is not a requirement, it serves as one demonstration of

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an employer's good faith effort as defined in the rules. The Department does not have adequate staff to provide individual ETC training sessions. However, ETC guidance documents are available through the Department at no cost.

COMMENT: A commenter supports the proposed language regarding ETC trainers and requests that NJDOT provide opportunities for training of additional ETC trainers.

RESPONSE: The Department appreciates your support. The Department is currently in the process of evaluating the need for additional ETC trainers.

COMMENT: A commenter recommends a length of time should be specified for which documents need to be maintained by registered non-affected employers and would like to see N.J.A.C. 16:50-8.10(c) amended.

RESPONSE: The Department concurs with the recommendation and will add subsection (d) on adoption that will require a non-affected employer to maintain the documents for a period of not less than five years from the date the documents were first generated.

COMMENT: A commenter feels a cap should be set on certification fees to induce non-affected employers to participate in the ETR Program.

RESPONSE: APO Survey Reports submitted by registered non-affected work locations are **not** required to be reviewed and certified by Department-approved compliance plan certifiers. Further, the Department does not intend to regulate certification fees for affected employer submittals. As a privatized function, the fees are market driven.

COMMENT: A commenter recommends removal of the term "actual" from the language as "actual costs" are not generally known during the planning phase of the project and feels N.J.A.C. 16:50-8.4(a)7 should be clarified.

RESPONSE: The Department feels there are actual costs such as ETC training, plan preparer costs, certifier fees which may be known prior to the initial plan submittal, therefore the word "actual" will not be removed. However, this does not preclude employers from also indicating projected or planned costs in their estimates.

N.J.A.C. 16:50-9 Plan Certification

COMMENT: A commenter recommends keeping plan certification in 1996 in the interest of fairness and consistency, or make more DOT staff available for thorough plan review.

COMMENT: A commenter would like clarification of the certification process.

COMMENT: A commenter is concerned that changes requiring certification only for initial plans and revised plans (relocations) could undermine the effectiveness of the program. Controlling fees that certifiers can charge should be considered.

COMMENT: A commenter feels that eliminating the certification process, the opportunity to ensure equity amongst plans is eliminated.

COMMENT: A commenter is concerned about the consistent review of submitted plans and recommends NJDOT provide adequate staff for the review of subsequent submitted plans.

COMMENT: A commenter recommends that plan certification be left in for 1996 and beyond.

RESPONSE: The 1990 CAAA requires affected employers to submit plans that "convincingly demonstrate" that the employer will achieve the APO target. The certification process that is required for all initial plans was put in place in order to assist the Department in determining the accuracy and efficacy of the employer plans. Plans submitted to the Department in 1996 are a demonstration of an employer's progress towards achieving the APO target. Their progress is based on the implementation of strategies outlined in their previously certified plan.

COMMENT: A commenter recommends that NJDOT consider TMA's as a clearinghouse for plan review as an alternative to both independent certification and NJDOT plan review.

RESPONSE: The State law requires certifiers to be "independent" of the employer whose plan they review. The Department has interpreted an absence of independence, especially when caused by current or recent prior financial connections between the employer and certifier to pose a potential conflict of interest. While the conflict of interest must be resolved, the Department will continue to explore various options for the review of employer compliance plans.

N.J.A.C. 16:50-11 Disclosure of Information

COMMENT: A commenter recommends that affected employers have the option to remove their name from the mailing list if they do not wish to receive additional solicitations.

COMMENT: A commenter believes that when a company's data is requested and released, per the proposed amendments, the company be notified in writing.

RESPONSE: Under the New Jersey Right to Know law, regulatory mailing lists, limited to the names, addresses and contact persons within the regulated community, are considered public information. The Department understands the commenters' concerns; however, it would become burdensome to delete names or modify the list. Further, since the same information is generally available from many commercial sources, such as Dun & Bradstreet, withholding names from the regulatory mailing lists would be of little value. Two commenters are also assured that only general mailing list information will be provided. The number of employees or other data specific to the employer or work location will not be disclosed. Additionally, with more than 3,400 affected worksites, it would be very cumbersome, time consuming and costly to notify all sites when a general listing is requested.

COMMENT: A commenter requests that the Department reconsider the apparent restrictions placed on an employer's use of information regarding itself in N.J.A.C. 16:50-11.2.

COMMENT: A commenter recommends that either NJDOT delete or clarify N.J.A.C. 16:50-11.1 and 11.2 so that they apply only with regard to an employer requesting information on another employer. The commenter also requests that the Department clarify that only one signed and dated written correspondence is required for each information request, because the commenter believes that the section, as written, implies that two written requests are needed.

RESPONSE: The Department believes that the language in N.J.A.C. 16:50-11, as proposed, provides affected employers with appropriate protection. This subchapter is not intended to limit the ability of a properly designated representative of a company to access information or data. However, the Department believes that the majority of affected employers would like some measure of assurance that no just any one who uses company letterhead can access information from the employer's plan. Regarding the commenter's concern about only needing one signed letter, it is the Department's intent that one letter requesting data would include all of the information specified for such requests in N.J.A.C. 16:50-11.

N.J.A.C. 16:50-12 Enforcement and Penalties

COMMENT: A commenter suggests that the ETRP Review Board rather than the Commissioner, should make the decision if an employer has acted in good faith.

RESPONSE: The amendments at N.J.A.C. 16:50-13.3(d) do not change how the Review Board will function. The amendments reduce the Board membership to a manageable and efficient size. Consistent with the intent of State law, the Department shall make the decision if an employer has acted in good-faith giving full consideration to the ETRP Review Board's recommendation.

COMMENT: A commenter requests that the Department reconsider the proposed new rule at N.J.A.C. 16:50-12.4 that provides the Commissioner discretion to determine whether a violation of the law has occurred.

COMMENT: A commenter recommends amending N.J.A.C. 16:50-12.2(a) to add a clause to read "an affected employer, at the Commissioner's discretion, shall be subject to civil administrative penalties for violations of this chapter."

COMMENT: A commenter recommends that N.J.A.C. 16:50-12.4, Noncompliance authority, be deleted.

RESPONSE: Existing rules and amendments being made to N.J.A.C. 16:50-12.2 provide the Commissioner with discretion in determining if a violation has occurred and the penalties for violations. The ETR program is new in New Jersey and there is no precedent for determining if a real violation has occurred or the extent of the violation. Therefore, issues of this nature must be given thorough care and analysis before a policy decision can be made. It is appropriate, under these circumstances, that these policy decisions rest with the Commissioner.

COMMENT: A commenter asks what final determination was made on penalties? As long as a good will effort is made by a company, it would seem penalties should be eliminated.

RESPONSE: The penalty structure is established under the New Jersey Traffic Congestion and Air Pollution Control Act and cannot be eliminated by a rule change. Under these rules, the Commissioner has discretion in assessing penalties. While it is not the Department's intent to penalize any employer that tries but does not achieve the trip reduction target, the Department maintains the right to take action against employers who continue to resist making a good faith effort.

COMMENT: A commenter asks that if the USEPA is backing off the issue of clean air and New Jersey's mandatory use of ETRP as a component of the State plan, will the NJDOT remove employer fines?

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RESPONSE: The Clean Air Act Amendments of 1990 require states that are in non-compliance with certain air quality standards to implement an ETR program. New Jersey meets these specified conditions, and it is not within the authority of USEPA to change the Federal law. As long as ETR is a Federal mandate, the Department and New Jersey employers will comply.

N.J.A.C. 16:50-13 Extensions, Exemptions and Waivers

COMMENT: Several commenters support the change in the deadline requirement for requesting extensions.

COMMENT: A commenter strongly supports the elimination of the application fee for extensions, exemptions and waivers.

COMMENT: A commenter strongly supports the revisions to "Exemption Criteria."

RESPONSE: The Department appreciates the commenters' support.

COMMENT: Several commenters request that schools be exempt from the requirements of the ETR Program.

RESPONSE: The Department is not authorized under Federal or State law to grant categorical exclusions to any group of employers. However, recognizing the unique challenges facing public schools that remain ineligible for an exemption, the Department is preparing additional amendments to the ETRP rules that would allow affected public school facilities to receive credit in their APO calculation for the transport of students to the school. The Department expects to propose this amendment within the next six months.

COMMENT: A few commenters requested that uniformed police officers and public safety employees be exempt from the program.

COMMENT: A commenter requests that the City of Vineland be deleted from the ETRP requirements.

COMMENT: A commenter requests that employers in Vernon Township receive waivers from the ETR Program.

COMMENT: A commenter believes that shifting out the peak is not a viable strategy for their organization, and therefore would like the Department to consider exempting certain employers from the ETRP regulations.

RESPONSE: While the Department understands the concerns and challenges facing all affected employers, particularly those in rural areas of the State and those with law enforcement and public safety employees, the Department is not authorized to grant categorical exclusions to any group of employers or employees under Federal or State law. Through the rule amendments being adopted and additional amendments that the Department intends to propose, it is hoped that most affected employers will find it easier to develop and implement an ETR plan that is less costly and not detrimental to the day-to-day operations of the work location. Further, it is not the Department's intent to penalize any employer who has made a good faith effort and has not achieved the trip reduction target.

COMMENT: A commenter suggests that the Department change the exemption criteria to include companies with less than 100 employees reporting during the peak period.

RESPONSE: The Clean Air Act Amendments of 1990 and the New Jersey Traffic Congestion and Air Pollution Control Act specify that employers with 100 or more employees are affected by the ETR Program. The Department has sought to limit the impact on employers by allowing them to average their number of employees over a 12 month period, and is hoping that with the change in peak period designation, more employers will be eligible for the exemption based on less than 33 employees scheduled to report during the peak period. Therefore, the Department will not be changing the exemption criteria as suggested.

COMMENT: A few commenters would like to see regulatory relief for the retail industry. It was suggested that a multiple shift exemption, which is purported to have been approved by the United States Environmental Protection Agency (USEPA) for ETRP in Illinois. The multiple shift exemption could allow the Department to exempt an employer that has three or more reporting periods during a 24-hour period and 33 or fewer employees typically report for work at a work location during each of the four one-hour periods comprising the peak period.

RESPONSE: Although the State of Illinois has proposed rule language which would provide a multiple shift exemption, USEPA has not yet approved their ETR Program. The Department recognizes that the State of Illinois has proposed the multiple shift exemption, but they still retain other less flexible requirements in their program. The Department hopes that the change in the designation of peak period, which reduces the peak period by one full hour, may prove beneficial to many employers, particularly retail facilities. However, the Department will take this comment under consideration for future changes pending USEPA decision on Illinois.

COMMENT: A commenter requests that the membership of the ETRP Review Board be broader to ensure that all elements of transportation demand management are represented.

COMMENT: A commenter disagrees with the designation of the Executive Director of the State Planning Office as Chairperson of the ETRP Review Board.

RESPONSE: The Department proposed the amendments to the ETRP Review Board rule to ensure a more manageable and impartial group review of any appeal that is raised for its review. The Department intends to keep the membership as it was proposed.

COMMENT: A commenter would like the Department to make special consideration for non-profit organizations who demonstrate "good faith" but their goal remains unattainable.

RESPONSE: Although all affected employers in New Jersey are required to implement Employee Commute Option Programs, the Department is making every effort to ease the burden on employers. Further, the Department recognizes that many employers will have difficulty meeting the mandated trip reduction targets. It is not the Department's intent to penalize any employer who has made a good faith effort and has not achieved the trip reduction target. Further, the Department remains committed to treating all affected employers equitably and fairly.

N.J.A.C. 16:50-15 ETRP Tax Credit

COMMENT: Several commenters recommend that non-affected employers who voluntarily participate in the ETR Program be eligible for the Employer Tax Credits.

COMMENT: A commenter suggests that employers be allowed to claim tax credits for carpoolers and other employees using commute alternative who arrive outside the peak period.

RESPONSE: The tax credits for employers, as adopted in P.L. 1993, Chapter 150 (N.J.S.A. 27:26A-15) provides tax credits only to "affected" employers. Additionally, both the State law and the rules for the ETR Program, limit the calculation of the tax credit to a percentage of the cost for providing commute alternatives to "participating" employees. For tax year 1994, participating employee is defined as all "affected employees" considered in the employer's plan. For 1995 and beyond, participating employee is defined as all affected employees participating in a commute alternative. The Department believes that it was the intent of the New Jersey Legislature when passing the Employer Tax Credit to limit such credits to those employers who are "required" to develop and implement ETR plans because of the impact on the State's revenue flow. Therefore, the Department believes that it is not within its authority to include either non-affected work locations or non-affected employees as eligible for tax credits.

COMMENT: A commenter suggests allowing the State tax credit for employees who participate in a commute alternative and arrive between 6:00 A.M. and 6:30 A.M. or between 9:30 A.M. and 10:00 A.M.

RESPONSE: The Department intends to allow employers to identify which peak period (6:01 A.M. to 9:59 A.M. or 6:31 A.M. to 9:29 A.M.) will be the peak period for their plan and the employer tax credits are to be based on participating "affected" employees. The identification of the peak period will determine the "affected" employees for whom the employer may claim a tax credit, since "affected employee" is defined as an employee who is scheduled to report during the peak hour. The language in N.J.A.C. 16:50-2.1 and 16:50-8 is being changed so that employers must have the same peak period for subsequent plan submittals as was identified in their initial plan or they must submit a revised plan.

Summary of Changes Upon Adoption, Based on Comments Received:

The phrase "employer identified" has been added throughout the rules to clarify that the Department will allow employers to identify which peak period (6:01 A.M. to 9:59 A.M. or 6:31 A.M. to 9:29 A.M.) will be the peak period for all of their compliance plans.

At N.J.A.C. 16:50-2.1, the definition of "Care facility" has been added to clarify that it is the Department's intent that care facilities include day care centers for pre-school age children, babysitting of pre-school age children by family members or friends in a private residence, and facilities that provide custodial services for older persons and/or handicapped citizens. It is not the intent of the Department to expand the common definition of "care facility" to include educational facilities, such as primary schools.

At N.J.A.C. 16:50-2.1, the definition of "Peak period" has been expanded to identify 6:01 A.M. to 9:59 A.M. OR 6:31 A.M. to 9:59 A.M. as peak periods. Employers are allowed to identify one of these peak periods. An employer must designate the same peak period for its initial plan and any

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subsequent plans which it is required to submit. This clarification has been made due to suggestions received from the commenters and the USEPA allowing states to designate the peak period that captures at least 85 percent of the peak period travel between 5:00 A.M. and 11:00 A.M. For purposes of this program 6:01 A.M. to 9:59 A.M. shall replace 6:00 A.M. to 10:00 A.M.

At N.J.A.C. 16:50-2.1, due to confusion pointed out by commenters, the definition of "Primarily assigned work location" or "primarily assigned location" has been revised to clarify that an employee is only counted if they physically report to the work location more than two days per week.

At N.J.A.C. 16:50-2.1, the definition of "Scheduled to report" has been revised to change the word "the" to "a" to clarify that employees may work for several hours, taken an uncompensated break, and then begin to work again later that same day. The Department did not intend for the language to be restrictive, thus is making this change.

At N.J.A.C. 16:50-2.1, the definition of "teleworking or telecommuting" has been revised to clarify that teleworking includes part of the day, with the stipulation that the part of the day spent teleworking includes the designated peak period and that the employee does not arrive and is not scheduled to report to the affected work location during the period.

With the expanded definition of "peak period," N.J.A.C. 16:50-5.2(a)4 has been amended on adoption to clarify that employers must identify which peak period they choose. If an employer has already submitted an initial plan using the 6:01 A.M. to 9:59 A.M. peak period, and wants to retain that same peak period, no notification to the Department is required. However, if the employer wants to identify 6:31 A.M. to 9:29 A.M. as their peak period, the employer must notify the Department with a revised initial plan. If no revised initial plan is submitted to the Department, the Department will assume the employer wishes to retain the 6:01 A.M. to 9:59 A.M. peak period.

The term "and registered non-affected" has been added to N.J.A.C. 16:50-7.2 because it was inadvertently overlooked when the term was added for clarification throughout the rule in the proposal. The addition of this term in the adoption corrects this mistake.

Also, "May 1, 1994" has been deleted since that date has passed and to clarify that newly affected employers are required to survey and submit plans.

Further, since January 1, 1995 has already passed, the term "by January 1 of that year" has been deleted and replaced with "at least 180 days prior to any required submittals" to conform with language in N.J.S.A. 27:26A-5. This also is consistent with initial plan submittal schedule. Because affected and registered non-affected employers have or will have filed initial plans at different times, the 180 day makes the schedule more consistent, and places the burden on the Department to provide affected employers with sufficient notification for each submittal.

N.J.A.C. 16:50-7.5(a)2i has been revised to add "primarily assigned." The proposed amendment to delete "primarily affected" was done in error. "Primarily assigned" work location is a term defined in these rules, "primarily affected work location" is not the correct terminology.

N.J.A.C. 16:50-8.10(d) has been added to clarify that a non-affected employer maintain the documents for a period of not less than five years from the date the documents were first generated. This is consistent with subsection (b) regarding affected employers.

Summary of Agency-Initiated Changes:

The Department has made minor grammatical and typographical corrections throughout the rules on adoption. Additionally, the Department invites employers and other interested parties to bring to its attention any additional grammatical or typographical errors that should be corrected. The Department will address such corrections in future rule amendment proposals.

At N.J.A.C. 16:50-7.3(a)1, the Department has provided a clarification regarding the use of a standard survey form for interim surveys (surveys conducted in years when a plan submission is not required). This change was made in response to several questions that have been raised throughout the implementation of the ETRP. The Department specifies that if the employer intends to submit a revised plan based on survey results, the survey must be conducted using the standard form provided by the Department. This requirement is made in order to maintain continuity and consistency of data provided to the Department through the plan submittals and to ensure that all such data can be adequately captured and processed in the main employer database maintained by the Department. To assist employers, the Department has given the highest priority to preparing an interim survey form.

At N.J.A.C. 16:50-8.5(a)3 through 5 and (b)2, the Department has replaced the word "letter" with the word "statement" in the requirement that employers, certifiers and plan preparers attest to the accuracy of plan information, management commitment, thorough review of plans, etc. To reduce the administrative burden on employers and to facilitate plan completeness review by the Department, the Department will include an appropriate statement for each of the parties on compliance plan forms so that separate letters do not need to be submitted. This is a simple administrative change.

Executive Order No. 27 Statement

The adopted amendments and new rules are being made by the Department in consideration of the economic impact on affected employers and to take advantage of flexibilities announced by the United States Environmental Protection Agency (USEPA).

The Federal government mandates that New Jersey implement an Employer Trip Reduction Program and the State's rules contain the same requirements as mandated by the Federal government.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

16:50-2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

. . .

"Affected employee" means an employee, employed by an affected or registered non-affected employer, who is scheduled to report at the affected or registered non-affected work location during the ***employer identified*** peak period.

. . .

"Affected work location" or "affected location" means a work location of an affected employer where 100 or more employees report to work or are primarily assigned.

. . .

"Average passenger occupancy" or "APO" means the average passenger occupancy of commuting vehicles arriving at an employer's affected or registered non-affected location during ***the employer identified*** peak period*[s]*, as calculated by the formula in N.J.A.C. 16:50-7.

"APO survey" means the survey of affected employees' commute patterns required to be conducted at an affected or registered non-affected location by affected and registered non-affected employers in accordance with N.J.A.C. 16:50-7.

. . .

"Care facility" means a day care facility, nursery school, private residence, or other building or facility at which pre-school age children are cared for during normal working hours. Additionally, health care or custodial care facilities that provide services for elderly or handicapped individuals are also considered care facilities.

"Carpool" means a group of two to six occupants commuting to and from a work location by means of a vehicle with a seating capacity of 15 or fewer occupants. The driver of a taxi or other livery service is not counted as a carpool occupant.

. . .

"Compliance plan," ***initial*** plan, "update plan," "revised plan" or "maintenance plan" means a plan ***that*** an affected or registered non-affected employer is required to submit to the Department in accordance with N.J.A.C. 16:50-8.

. . .

"Consolidated plan" means a plan, submitted by one employer for two or more of the employer's affected or registered non-affected work locations within any target APO area, or submitted by several employers with work locations within any target APO area, that satisfies the plan submittal requirement of N.J.A.C. 16:50-8 for each of the participating work locations.

. . .

"Dependent" means any person who is a relative by blood, marriage, or adoption; foster child; or any other person who lives in the home as a family member, and who receives at least half of his or her total financial support, from the household of the employee claiming the dependent.

"Dual fuel vehicle" means a highway vehicle with the capability to be powered by either of two fuels, one of which is gasoline and the other of which is an alternative fuel, such as natural gas, propane, methanol, or other fuel as defined in the Comprehensive National Energy Policy Act

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of 1992, Title 3, Section 301, Public Law 102-486, approved October 23, 1992, (42 U.S.C. §13211).

"Employee" means a partner or limited partner in a partnership, or any person employed by an employer, in a full-time or part-time; permanent, temporary, or contract position, excluding volunteers, who either reports to work or is primarily assigned to a work location 80 or more hours per 28-day period for at least two consecutive months. A contract position is one in which the employee has a direct contractual relationship as an individual with the affected or registered non-affected employer, and reports to the affected or registered non-affected work location for a period of at least six consecutive months and whose work hours and assignments are defined by the employer. A contract position shall not include those positions employed through independent contract companies.

"Employee commute options (ECO) program" means a program, required to be implemented by an affected employer or voluntarily implemented by a registered non-affected employer at a work location in accordance with this chapter to reduce vehicle trips to the work location during the peak period, increase the location APO, and reduce commute trip vehicle miles travelled by employees at the location.

. . .

"Highest ranking responsible officer" ***(HRRO)*** means the president, executive or managing director, other chief executive or operating officer, or other highest ranking employee located at an affected or registered non-affected work location, who has primary responsibility for the operation and management of the work location.

. . .

"Newly affected employer or newly affected work location" means a work location that was not previously registered as an "affected employer," but now has 100 or more employees as averaged over the immediately preceding 12 month-period; an affected work location that was previously granted an exemption from the requirements of N.J.A.C. 16:50 by the Department but is no longer exempt; or *[an]* ***a*** affected employer that has been sold to or taken over by an new corporation or owner. An affected employer or work location that has undergone only a change in name, operating structure, highest ranking responsible officer or chief executive officer would not be considered a newly affected employer.

"Non-affected employer" means a New Jersey employer that employs fewer than 100 employees as averaged over the immediately preceding 12-month period at any single work location in an affected area of New Jersey; an employer that is located outside of an affected area of New Jersey; or an affected employer that was previously granted an exemption from the requirements of N.J.A.C. 16:50 by the Department.

"Non-affected work location" or "non-affected location" means a work location of a non-affected employer or a work location of an affected employer where fewer than 100 employees are primarily assigned.

"Peak period" means the time period ***identified and adopted by an affected employer or registered non-affected employer which shall be the designated peak period for their work location and shall be the requisite peak period for their work location relative to all surveys, compliance plans and other requirements under this Chapter. An affected employer or registered non-affected employer shall identify one of the two defined peak periods, which are the time periods*** between the hours of *[6:30]* ***6:01*** A.M. and *[9:30]* ***9:59*** A.M. inclusive, Monday through Friday***, or between the hours of 6:31 A.M. and 9:29 A.M., inclusive, Monday through Friday. An employer shall designate the same peak period for its initial plan and any subsequent plans which it is required to submit under the requirements of this chapter. If an initial plan has bee submitted as of June 19, 1995, the employer shall notify the Department of the employer identified peak period through the submittal of a revised initial plan if the employer identified peak period shall be 6:31 A.M. to 9:29 A.M. No notification is required if the employer identified peak period shall be 6:01 A.M. to 9:59 A.M***.

. . .

"Primarily assigned work location" or "primarily assigned location" means the location to which the employee would report more than 50 percent of his or her time to perform work for the employer. The primarily assigned work location of an employee who does not report to any single location more than 50 percent of his or her time or who teleworks more than 50 percent of his or her time, is the location to which the employee would report for purposes of employer administration. An employee who does not report to any single location more than 50 percent of his or her time is primarily assigned to the location to which the employee would report for the purposes of employer administration, provided the employee physically reports to such location *[at least]* ***more than*** two days in a typical week.

. . .

"Registered non-affected employer" means a non-affected employer that is located in an affected area of New Jersey and that voluntarily participates in the ETR Program and is registered as such with the Department.

"Registered non-affected work location" or "registered non-affected location" means a non-affected work location that is located in an affected area of New Jersey and that voluntarily participates in the ETR Program and is registered as such with the Department.

"Scheduled to report" means the employee is directed by the employer to be prepared to begin or continue *[the]* ***a*** compensated portion of the work day.

. . .

"Teleworking" or "telecommuting" means a strategy in which an employee substitutes *[for an entire day]* the location at which its work is performed; that is, work assigned to be done at the affected or registered non-affected work location is instead done at the employee's residence or other work location that is not more than 10 miles and not more than 50 percent of the distance from the employee's home to the affected or registered non-affected work location, such that the employee makes a substitution for the commute trip to the affected or registered non-affected work location for the entire day***, or for part of the day, provided that the part of the day spent teleworking occurs within the employer identified peak period, and the employee affected does not arrive at the affected work location during the employer identified peak period***.

. . .

"Vanpool" means a group of seven or more occupants commuting to and from work by means of a vehicle with a seating capacity of not more than 15 occupants.

. . .

16:50-3.1 Scope

(a) The requirements of this chapter apply to all affected employers as defined in N.J.A.C. 16:50-2, including government employers and independent government employers, except that the following employers may apply to the Department for an exemption from the requirements of this chapter:

1. Affected employers that have fewer than 33 employees scheduled to report to a single work location during the ***affected employer's identified*** peak period, when averaged over the immediately preceding 12 month period. Employers that received an exemption from the requirements of this chapter prior to *[(the effective date of this amendment)]* ***June 19, 1995*** because they had fewer than 33 employees scheduled to report to the work location during the ***affected employer's identified*** peak period are not required to reapply for an exemption provided the number of employees scheduled to report to the location does not exceed 33 in any single month; and

2. Affected employers that employ an average of less than 100 employees for the immediately preceding 12 month period.

(b) A registered non-affected employer shall be subject to provisions of this chapter as subsequently described.

16:50-3.2 Employer requirements

(a) Seven actions are required of affected employers. Such employers shall:

1.-3. (No change.)

4. Develop and submit to the Department by November 15, 1994 and in subsequent years as required by this chapter, compliance plans that describe activities to be implemented at the location under an employee commute options (ECO) program (N.J.A.C. 16:50-8).

5.-7. (No change.)

(b) (No change.)

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(c) There are three actions required of a registered non-affected employer or work location. Non-affected employers and non-affected work locations that desire to voluntarily participate in the ETR Program shall:

1. Register with the Department as a "registered non-affected work location";

2. Periodically conduct an APO survey of its employees to determine employees' current commute patterns; and

3. Report the results of the survey to the Department.

(d) Any registered non-affected work location failing to undertake any or all of the actions listed in (c) above shall forfeit its designation as a registered non-affected location.

16:50-5.1 Registration deadlines

(a) By the due date specified in the notification mailing and as published in the public notice (see N.J.A.C. 16:50-4), each affected employer shall submit a completed standard registration form to the Department. Notwithstanding that an employer may not have been mailed or received the notice or form, an affected employer shall in any event complete the required registration form, copies of which may be obtained upon request from the Department of Transportation, Employer Trip Reduction Program, and submit the completed form to the Department by the deadline specified in the published notice.

(b) Each employer that receives a notification packet shall respond even if the employer believes it is not subject to this rule. An employer that does not meet the definition of affected employer or that meets a test for exempted employer described in N.J.A.C. 16:50-13 shall not be required to submit the standard registration form, but shall submit an ETRP return form for non-affected employers, included in the notification packet, indicating the reason for non-applicability. The Department may request the employer to submit additional documentation to verify the employer's non-affected status.

(c) (No change.)

(d) An affected employer that moves its work location within the State after registering with the Department must submit a new registration form within 60 days of the date of the relocation.

(e) An employer with one or more non-affected work locations in affected areas of New Jersey that voluntarily chooses to register such locations with the Department may do so at any time.

16:50-5.2 Completion and submittal of registration form

(a) Each affected employer shall complete a standard registration form for each affected location in New Jersey. The form must be signed by the highest ranking responsible officer at the location who shall attest to the accuracy of the information reported. An affected employer shall provide the following information on the form:

1.-3. (No change.)

4. The total number of employees primarily assigned to the location and the number scheduled to report to the work location during the ***employer identified*** peak period*[;]***. **The employer shall also identify the peak period which shall be fixed for the work location. An employer that has submitted an initial plan and APO report using the 6:01 A.M. to 9:59 A.M. peak period, but fails to submit a revised initial plan which changes the employer identified peak period, shall be assumed to be retaining the 6:01 A.M. to 9:59 A.M. peak period.***

5.-6. (No change.)

(b) An affected employer with more than one location in New Jersey shall complete a separate registration form for each affected location, but individual registration forms may be submitted together.

(c) An employer that chooses to register one or more non-affected locations in the ETR Program shall complete a standard registration form for each such location. An employer with more than one non-affected location in New Jersey must complete a separate registration form for each non-affected location the employer chooses to register, but individual registration forms may be submitted together.

(d) An affected employer may designate a single contact person to receive APO survey and compliance plan forms for all affected and registered non-affected locations.

16:50-6.1 Designation of ETRP performance measure

The Department has established average passenger occupancy (APO) at a work location as the performance measure against which an affected employer's compliance with the State's ETR program will be measured. APO is a measure of the average occupancy of passenger vehicles arriving at a single location, and is equal to the number of employees arriving at the location during the ***employer identified*** peak period divided by the number of passenger vehicles in which the employees arrive at the same location during the ***employer identified*** peak period.

16:50-6.6 Deadline for compliance with the target APO

Not later than November 15, 1996, each affected employer is required to increase the APO at the employer's affected work locations during the ***affected employer's identified*** peak period to the target APO of the target area in which the employer is located. An employer that has achieved the target APO is required to maintain the location APO at a level at least as high as the target APO, but is not required to increase its APO beyond the target APO. Each affected employer shall document achievement of the target APO at each affected location through the APO survey, described in N.J.A.C. 16:50-7, and report the location's compliance with the target APO to the Department, in accordance with N.J.A.C. 16:50-8.

16:50-7.1 Requirement to survey

For the purpose of documenting the work location APO, each affected and registered non-affected employer shall conduct APO surveys of the commute patterns of the employees who are scheduled to report to its affected and registered non-affected locations during the ***employer identified*** peak period. APO surveys shall be conducted in each year that the employer is required to make a submission to the Department, but in no case earlier than December 6, 1993. An affected or registered non-affected employer that has not demonstrated achievement of the target APO by November 15, 1996 shall additionally conduct an APO survey in 1997 as specified in N.J.A.C. 16:50-7.3(a). An employer with more than one affected or registered non-affected location in the State shall conduct a survey at each such location.

16:50-7.2 Notice of requirement to survey

The Department shall, within 180 days of receiving completed registration forms from affected ***and registered non-affected*** employers, *[but not later than May 1, 1994,]* notify each affected and registered non-affected employer of the requirement to conduct an APO survey and to develop and implement a compliance plan in accordance with the requirements of N.J.A.C. 16:50-8. In subsequent years that employers are required to make a submittal to the Department, the Department shall notify each affected and registered non-affected employer of the requirements *[by January 1 of that year]* ***at least 180 days prior to any required submittals***. The notice shall include copies of the required APO survey and compliance plan forms.

16:50-7.3 Survey procedure

(a) Each affected and registered non-affected employer shall conduct APO surveys of all employees assigned to report to its affected and registered non-affected work locations during the ***employer identified*** peak period, except as provided in (a)4 below, using the following procedure:

1. An employer shall use the standard APO survey form provided by the Department, and designed to collect information on the commute patterns of affected employees to allow the employer to calculate the work location APO as described in N.J.A.C. 16:50-7.5. ***In years when a survey is not required, an employer that intends to submit a revised plan to the Department, shall use the standard APO survey form provided by the Department.*** The standard form shall be used without alteration, except that the Department may permit an employer to substitute a different survey form that collects information that is substantially similar to that collected by the standard form if the employer's form has been submitted to and approved by the Department, prior to administration of the survey. The Department shall have the authority to refuse approval of any form that could be expected, in the Department's judgment, to produce different survey results than if the standard form had been used. An employer shall be permitted to attach

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additional survey forms to the standard form, if desired, without prior approval of the Department. Notwithstanding these provisions, alterations, such as photocopying the survey on company letterhead, that do not add or delete questions or change the wording or order of questions, will be permitted without prior written approval of the Department. ***Notwithstanding these provisions, employers that conduct interim surveys that do not require plan revisions, may use either the standard form or any variation thereof.***

2. Employers shall choose a typical week in which to conduct the APO survey. A week shall not be considered typical if it:

i. (No change.)

Recodify existing iii.-v. as ii.-iv. (No change in text.)

3. APO surveys conducted for subsequent plan submittals (1996, 1997 and after, if required) shall be conducted no earlier than January of the submittal year.

4. Each affected and registered non-affected employer shall survey all affected employees scheduled to report to its affected and registered non-affected locations during the ***employer identified*** peak period in the survey week, except that an employer with 1,000 or more employees arriving at a single location during the ***employer identified*** peak period may survey a random sample of those employees. Employers desiring to conduct a random sample survey shall submit to the Department, Employer Trip Reduction Program, a sampling methodology that is recognized as statistically valid with a 95 percent confidence level, and documentation that the person or persons conducting the survey have the qualifications to ensure the survey will be conducted in a statistically valid manner. The Department shall grant or deny approval for the random survey within 30 days of receipt of the methodology. Employers utilizing random sampling surveys shall be subject to the same requirements for document recordkeeping (N.J.A.C. 16:50-8.10) and work location audits (N.J.A.C. 16:50-11.1) as employers using the standard survey procedures.

5. An employer may use its own staff to conduct the APO survey or arrange with a market research or transportation consultant, local government, TMA, or other entity outside the employer to conduct the survey.

16:50-7.4 Reporting of survey results

Each affected and registered non-affected employer shall tabulate the APO survey results and report the results to the Department on a standard form to be provided by the Department. The employer shall submit the APO survey results as a component of the compliance plan in accordance with N.J.A.C. 16:50-8. In years in which the employer is required to document its work location APO to the Department but is not required to submit a plan, survey results shall be submitted *[alone]* as an APO survey report ***on standard forms provided by the Department***.

16:50-7.5 Calculating work location APO

(a) Each affected and registered non-affected employer shall demonstrate its compliance with the ETRP by documenting achievement of the target APO as described in N.J.A.C. 16:50-6. The Department shall measure each such employer's performance, as documented by the work location APO, against the target APO.

1. An employer shall calculate the APO for its work location from the results of the APO survey as follows:

$$\text{Work Location APO} = \frac{\text{Number of Employees Arriving}}{\text{Number of Vehicles Arriving}} \quad \text{where:}$$

Employees Arriving is: total number of employees scheduled to report to the location *[between 6:30 A.M. and 9:30 A.M.]* ***during the employer identified peak period***, Monday through Friday of the survey week, and

Vehicles Arriving is: total number of passenger vehicles in which these employees arrive at the location *[between 6:30 A.M. and 9:30 A.M.]*, ***during the employer identified peak period,*** Monday through Friday of the survey week.

To illustrate the calculation of APO, the following example is provided:

	Mon.	Tues.	Wed.	Thurs.	Fri.	Total Week
No. Employees	200	200	200	200	200	1,000
No. Vehicles	165	170	180	175	170	860

$$\text{Work Location APO} = \frac{\text{1,000 Employees Arriving}}{\text{860 Vehicles Arriving}} = 1.16$$

2. Calculation of APO shall count employees scheduled to report at the location during the ***employer identified*** peak period*[s]*, Monday through Friday of the survey week as follows:

i. Each employee that is scheduled to report to the location during the ***employer identified*** peak period shall be counted as one employee arriving for each of the days Monday through Friday of the survey week that the employee reports to the location, regardless of the actual arrival time or length of time the employee remains at the location. An employee that is scheduled to report *[between 6:30 A.M. and 9:30 A.M.]*, ***during the employer identified peak period*** but that actually arrives at the ***primarily assigned*** work location prior to *[6:30 A.M. or after 9:30 A.M.]* ***the employer identified peak period*** shall be counted as arriving at the scheduled to report time.

ii. Each employee that teleworks shall be counted as one employee scheduled to report during the ***employer identified*** peak period for each day the employee teleworks.

iii. Each employee that works a compressed work week shall be counted as one employee scheduled to report during the ***employer identified*** peak period for each day worked as well as each compressed work week day off.

iv. An employee that is scheduled to report to the primarily assigned work location but that does not report at all shall not be counted for the day that he or she does not report to the work location.

v. An employee that is scheduled to report to the work location during the ***employer identified*** peak period and then remains on-site or at work for more than 24 continuous hours shall be counted as arriving each consecutive day he or she remains on-site or at work.

vi. Beginning in 1995 and in any subsequent year, each employee that was scheduled to report during the ***employer identified*** peak period in the survey week documented in the approved 1994 ***or initial*** plan and whose scheduled to report time was subsequently, purposefully changed to a time outside of the ***employer identified*** peak period, other than changes caused by regularly scheduled shift work changes, shall be counted as one employee scheduled to report for each survey day the employee arrives at the work location.

vii. An employee who transports a dependent for at least 50 percent of the total one way commute or two miles, whichever is less, to a care facility shall be counted as arriving in a carpool or vanpool. For the calculation of APO, each dependent shall be counted as a carpool or vanpool occupant*[s]*, as appropriate.

3. For calculation of APO, the count of vehicles arriving shall include:

i. Passenger cars and trucks, with fewer than seven occupants; and

ii. (No change.)

4. The following shall be counted as zero vehicles arriving:

i. Vanpools with seven or more occupants;

ii.-iv. (No change.)

5. An employee that works a compressed work week or teleworks shall be counted as arriving at the work location in a zero vehicle on the day he or she does not report to the work location.

6. An employee that is scheduled to report to the work location during the ***employer identified*** peak period and then remains on-site or at work for more than 24 continuous hours shall be counted as arriving in the commute mode in which he or she arrived the first day and then in a zero vehicle for each consecutive day he or she remains on-site or at work.

7. Beginning in 1995 and in any subsequent year, each employee that was scheduled to report during the ***employer identified*** peak period in the survey week documented in the approved 1994 ***or initial*** plan and whose scheduled to report time was subsequently, purposefully changed to a time outside of the ***employer identified*** peak period, other than changes caused by regularly scheduled shift work changes, shall be

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counted as one employee arriving in a zero vehicle for each survey day the employee arrives at the work location at a time other than the ***employer identified*** peak period.

8. An employee that is dropped off at the work location by another employee or employees commuting to their work location or locations shall be counted as arriving in a share of a vehicle proportional to the number of occupants in the vehicle, even if the other employees do not work for an affected employer.

9.-10. (No change.)

11. An employer shall not count employees who have disabilities which require the use of a single-occupant vehicle for commuting in the APO calculation. The vehicles of such employees shall not be counted in the APO calculation.

12. An affected employee that does not respond to the APO survey as described in N.J.A.C. 16:50-7.3(a)4 shall be counted as one employee arriving in one vehicle for the purposes of the APO calculation. Notwithstanding this provision, however, if the employer has achieved a response rate among employees scheduled to report during the ***employer identified*** peak period of the survey week of 90 percent or higher, nonresponding employees shall be assumed to have commute patterns proportional to the commute patterns of respondents.

13. A dual fuel vehicle used for commuting shall be counted as a zero vehicle on the days it arrives at the work location, regardless of whether it was powered by gasoline or the alternative fuel for that commuting day.

16:50-8.1 Requirements

Each affected and registered non-affected employer shall prepare and implement compliance plans and/or shall prepare APO reports in accordance with the procedures and schedules established in this subchapter.

16:50-8.2 Plan and report submittal schedule

(a) Each affected employer shall submit compliance plans and APO reports, as described in N.J.A.C. 16:50-8.4 and 8.5, respectively, to the Department of Transportation, Employer Trip Reduction Program, ATTENTION: Employer Assistance Unit, 1035 Parkway Avenue, ***CN 619,*** Trenton, NJ, 08625 in accordance with the following schedule:

1. Not later than November 15, 1994, each affected employer shall prepare and submit to the Department an initial compliance plan for each of its affected work locations. Work locations that become affected work locations, that becomes affected after May 1, 1994 shall be considered newly affected work locations and given a minimum of 180 days from the date they register with the Department, as required by N.J.A.C. 16:50-6, to prepare and submit initial compliance plans. These work locations further shall not be required to demonstrate achievement of the target APO in effect on the date of the initial submittal for the newly affected work location until two years following submittal of the initial plan.

2. Not later than November 15, 1996, each affected work location that has achieved the required APO target shall prepare and submit to the Department a maintenance plan for each such work location as described in N.J.A.C. 16:50-8.4(c).

3. Not later than November 15, 1996, each affected work location that has not achieved the required APO target shall prepare and submit to the Department an update plan as for each such work location as described in N.J.A.C. 16:50-8.4(c).

4. After November 15, 1996, each affected work location shall maintain the target APO for the employer's target area. Subsequent compliance plans shall be required if mandated by the Federal Environmental Protection Agency (EPA), if required by the New Jersey Department of Environmental Protection to comply with EPA's mandated State Implementation Plan requirements, or if an affected work location is not in compliance with the required target APO.

5. Not later than November 15, 1997, each employer whose 1996 APO survey showed it did not meet the target APO for an affected work location shall prepare and submit to the Department an APO Survey Report for each such work location documenting the results of a 1997 survey.

6. An affected employer that moves its work location within the State, desires to modify the elements of its compliance plan, or experiences a change in its work location operations that could reasonably be expected to affect the appropriateness or effectiveness of an approved compliance plan, shall submit a revised plan within 90 days of the change. A revised compliance plan must be reviewed by a certifier prior to submittal to the Department when the revision is necessitated by a relocation of the work location. Other compliance plans revised for other minor corrections may be submitted directly to the Department for review and approval.

(b) Registered non-affected work locations shall submit an initial APO Survey Report to the Department within 180 days of registering with the Department. The initial APO Survey Report shall represent only the APO for the individual registered non-affected work location.

(c) Registered non-affected work location shall submit subsequent APO Survey Reports to the Department not more than two years after the initial report was submitted or in conjunction with the submittal of an affected work location's update or maintenance plan.

16:50-8.3 Plan filing fees

(a)-(d) (No change.)

(e) Registered non-affected employer***s*** shall be exempt from the payment of filing fees.

16:50-8.4 Components of a standard compliance plan

(a) Affected employers shall prepare compliance plans using a standard compliance plan form developed by the Department. The plan will include all information required by the standard plan form, including the following:

1. The name of the affected employer, address of the affected work location, and name, title, and telephone number of the Employee Transportation Coordinator (ETC) at the work location appointed by the employer.

2. The results of the current APO survey and any previously required APO surveys and a description of the procedure used to conduct the APO survey;

3.-4. (No change.)

5. Activities planned by the employer to implement the ECO program and a time schedule for implementation of the program; *[and]*

6. A description of the process by which the employer will periodically monitor and review progress toward the APO target*[.]**; and***

7. A description of the actual and projected costs to develop, implement, and monitor the ECO program.

(b) Each affected employer shall provide information included in (a)1 through *[6]***7*** above in the initial plan to establish a baseline against which future years' plans can be compared. ***An affected employer must identify and adopt the peak period that shall be utilized and reflected for the initial plan or the revised initial plan and all subsequent plan submittals.****

(c) Beginning with the 1996 update plan and for any subsequent update plan, each employer with an affected work location that has not achieved the target APO also shall provide the following information:

1.-3. (No change.)

(d) (No change.)

(e) Each registered non-affected work location shall prepare APO Survey Reports using a standard form developed by the Department. The report will include all information required by the standard form, including:

1. The name of the employer, address of the registered non-affected work location, and name, title, and telephone number of the employer's contact at that work location; *[and]*

2. The results of the current APO survey and a description of the procedure used to conduct the APO survey***; and***

3. A registered non-affected employer shall identify the peak period that shall be utilized and reflected in the initial APO Survey Report and all future APO Survey Reports*.

16:50-8.5 Required components of compliance plan submittals

(a) A complete compliance plan submittal to the Department shall consist of the following elements:

1. The plan elements described in N.J.A.C. 16:508.4(a) 1 through *[6]***7***, and a summary, prepared by the certifier as described in N.J.A.C. 16:50-9, of plan information included in N.J.A.C. 16:50-8.4(a)3

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through 6. Update plan submittals also shall include the information required in N.J.A.C. 16:50-8.4(c);

2. (No change.)

3. A *[letter]* ***statement*** signed by the highest ranking responsible officer at the work location who shall attest that the employer will implement the plan as described, retain all ECO documents on file, as required by N.J.A.C. 16:50-8.10, and make such documents available for review by the Department or its agent;

4. A *[letter]* ***statement*** signed by the highest ranking responsible officer at the work location or plan preparer, if different from the employer, who shall attest to the corrections of the information included in the plan; and

5. A *[letter]* ***statement*** signed by an approved certifier who has reviewed and certified the plan in accordance with the procedures established in N.J.A.C. 16:50-9.

(b) A complete APO Survey Report submitted by a registered non-affected work location shall consist of the following elements:

1. The report elements described in N.J.A.C. 16:50-8.4(e)1 and 2;

2. A *[letter]* ***statement*** signed by the highest ranking responsible officer at the work location or report preparer, if different from the employer, who shall attest to the correctness of the information included in the report; and

3. APO Survey Reports submitted by registered non-affected work locations are not required to be reviewed and certified by Department approved compliance plan certifiers.

16:50-8.6 Required components of APO survey reports submitted by affected work locations

(a) A complete APO survey report submittal from an affected work location shall consist of the following elements:

1.-2. (No change.)

3. A *[letter]* ***statement*** signed by the highest ranking responsible officer at the work location or report preparer, if different from the employer, who attests to the accuracy of the information included in the report.

16:50-8.7 Consolidated plans and averaging APO reports

(a) Beginning in 1996 and in any future year for which an affected employer is required to submit an update plan or APO survey report, such employers may submit a consolidated plan or report, as defined in N.J.A.C. 16:50-2, subject to the following provisions:

1. An employer with more than one affected or registered non-affected location or two or more separate affected or registered non-affected employers may submit a consolidated plan or report for any or all of the affected or registered non-affected locations, provided that collectively the participating work locations reach the appropriate average target APO.

2. Employers submitting consolidated plans or APO Survey reports for work locations located within a single APO target area shall average the APOs for all of the work locations participating in the consolidated plan. The average APO shall be calculated as the total number of employees scheduled to report at all participating locations during the ***employer identified*** peak period of the survey week, divided by the total number of vehicles in which those employees arrive.

3. Employers submitting consolidated plans or APO survey reports for two or more work locations located in different APO target areas shall determine the averaged target APO for the participating work locations. This shall be done by first determining the theoretical maximum vehicles allowed for the individual participating work locations, as if the individual work location were to come into compliance itself. This shall be calculated as:

$$\text{Maximum vehicles allowed (at each work location)} = \frac{\text{Affected employees at each location}}{\text{APO Target at each location}}$$

	Employer "A"	Employer "B"
Affected Employees	1,000	500
Individual APO Target	1.40	1.97
Maximum Vehicles Allowed	714	254

The Averaged "Target" APO shall be calculated as:

$$\text{Averaged Target APO} = \frac{\text{Sum of Affected Employees}}{\text{Sum of Maximum Vehicles Allowed}}$$

where:

Employees are: Total number of employees scheduled to report at a participating location during the ***employer identified*** peak period of the survey week; and

Maximum Vehicles are: The maximum number of passenger vehicles that could arrive at the affected work location and still have the individual work location meet its APO target. Using the employer examples shown above, the Averaged APO Target would be calculated as:

$$\text{Averaged APO Target} \quad \frac{1{,}000 \text{ employees} + 500 \text{ employees}}{714 \text{ vehicles} + 254 \text{ vehicles}}$$

Averaged APO Target = 1.54

Both the number of affected employees and the maximum number of vehicles allowed at each participating location shall be determined for each location. Each participating work location shall be assigned the averaged APO target as the APO target for each individual location. To determine compliance, the actual average APO shall be calculated as the sum of employees scheduled to report at each work location divided by the sum of the actual number of arriving vehicles at each location.

4. An employer that submits a consolidated plan for multiple affected and/or registered non-affected work locations and averages its APO shall prepare a consolidated maintenance plan.

5. Multiple employers participating in a consolidated plan shall individually prepare plan sections for each participating work location, accompanied by a jointly-prepared APO survey report, signed by the highest ranking responsible officer for each employer participating in the plan. The APO calculation shall present the results of the APO calculation as though the participating locations were one employer or one location.

16:50-8.9 Requirement for an ETC

(a) Each affected employer shall designate an employee transportation coordinator (ETC) at each affected work location to administer the ECO program at that work location.

(b) An affected employer is not required to send its designated ETC to training. However, the Department shall provide affected employers with a list of Department approved ETC trainers and Training courses.

(c) The Department shall issue a request for qualifications (RFO) for ETC Trainers and select candidates from among trainer applicants. To be considered for selection as a candidate trainer, applicants must have two years experience in the direct conduct of adult education classes or courses, or may substitute a bachelor's degree in education for experience in the conduct of adult education courses and in addition must also have at least two years of education or experience in the field of transportation demand management, transportation planning or closely related field.

(d) To be approved as ETC Trainers, candidates must attend and complete a training course developed and sponsored by the Department, and must pass a proficiency examination at the completion of the course. ETC Trainer candidates who successfully complete the Department sponsored training course, will be required to sign a Memorandum of Understanding with the Department agreeing to provide ETC Training with the course content and materials provided for and required by the Department, and to provide the Department with appropriate documentation of ETC Training conducted by the ETC Trainer and other reports as requested by the Department. Additionally, all ETC course materials shall be reviewed and approved by the Department. Participation in the Department provided ETC Trainer training course may be at the expense of the candidate trainer. The Department may require candidate trainers to pay for Department provided training in the event that there is not sufficient funding allocated to the Employer Trip Reduction Program, either by the State legislature or through the authorization of Federal highway funds.

(e) Department approval shall be conferred on individuals only, not the company or organization by whom they are employed. The Department shall approve ETC Trainers for one-year renewable periods. The Department may deny or may revoke the ETC Trainer's approval if the Department receives multiple complaints from employers regarding the ETC Trainer's conduct of training courses or fees, or if a Department audit of such training courses provided by the ETC Trainer indicates that such courses are not being conducted as approved by the Department.

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The ETC Trainer may appeal revocation of approval in the same manner as provided for certifiers in N.J.A.C. 16:50-14.

(f) Notwithstanding any other provision of this chapter, there is no prohibition against an ETC Trainer charging a fee for ETC Training.

16:50-8.10 Document recordkeeping

(a) Each affected employer shall maintain copies of all documents prepared or used in the document preparation by the employer or by other entities acting on behalf of the employer in accordance with these rules. These documents shall include, but not be limited to, documents related to:

1.-4. (No change.)

5. Program monitoring and evaluation;

6. Development of the affected employer's ECO Program, including survey forms and results, policies and procedures related to the ECO Program, etc. Such documentation need not include draft writings or preliminary policies and procedures developed by the affected employer; and

7. Costs and expenses relative to the development, implementation and monitoring of the ECO Program.

(b) (No change.)

(c) Each registered non-affected work location shall maintain copies of all documents prepared or used in document preparation by the employer or by other entities acting on behalf of the employer in accordance with these rules. These documents shall include, but may not be limited to, documents related to:

1. Conduct of the APO survey;

2. Calculation of work location APO; and

3. Preparation of reports.

(d) A registered non-affected employer shall maintain the documents set forth in (c) above in the office of the ETC or other designated person for a period not less than five years from the date the documents were first generated.

16:50-9.1 Selection and approval of certifiers

(a) Prior to submittal to the Department, initial compliance plans shall be certified as to accuracy and efficacy by a person approved by the Department as qualified to so certify plans. Notwithstanding this provision, an employer that submits a revised plan in accordance with N.J.A.C. 16:50-8 shall not be required to have the plan certified prior to its submittal to the Department. Certification shall be conducted in accordance with the following procedure:

1.-5. (No change.)

16:50-9.2 Certification procedures

(a) The following procedure shall govern plan certification:

1.-3. (No change.)

4. It is the responsibility of each affected employer to allow adequate time for certification. Failure of the certifier to certify the employer's plan in time to allow submittal of the plan to the Department prior to the deadline shall not excuse the employer from this obligation. Notwithstanding this provision, however, an employer that submits a certifiable plan to a certifier at least 90 days prior to the plan submittal deadline shall not be considered in violation of the plan submittal deadline until 60 days after the scheduled submittal date to the Department.

16:50-9.3 Plan certification criteria

(a) In assessing whether an initial compliance plan can be certified, a certifier shall consider the following criteria:

1.-7. (No change.)

16:50-10.1 Plan review schedule

Within 180 days of receipt of a plan*,* the Department shall review the plan for completeness and consistency with the provisions of this chapter and shall return an incomplete and inconsistent plan to the employer for revisions. If a plan is returned to the employer, concurrently, the Department shall notify the appropriate certifier that the plan was returned and the reason(s) it was returned. An employer whose plan is returned shall have 60 days from the date of return to revise and resubmit the plan to the Department. The employer shall not be required to have the plan recertified prior to resubmittal to the Department if the revised plan is not precipitated by a relocation of the work location. A plan not returned to the employer by the Department within 180 days of submittal shall be considered approved by the Department.

16:50-10.3 Additional review by Department of sample of plans

The Department shall select a portion of the compliance plans reviewed and certified by each certifier for review, in accordance with the criteria presented in N.J.A.C. 16:50-9 for plan review and certification.

SUBCHAPTER 11. DISCLOSURE OF INFORMATION

16:50-11.1 Administration of the Employer Trip Reduction Program

No disclosure of information obtained from and identifiable to specific employers in the course of administering the requirements of the Employer Trip Reduction Program shall be made directly or indirectly, except as authorized by the Commissioner or his or her representative in accordance with this subchapter.

16:50-11.2 Authorized disclosure of information

(a) Disclosure of any information in the course of administering the ETR Program may be authorized in the following cases for the following purposes:

1. To the Department of Treasury, Division of Taxation, for the purposes of verifying eligible expenses and deductions claimed for State income tax purposes;

2. To any properly identified employee or duly authorized representative of an affected employer required to file a compliance plan, APO Survey Report or other information in accordance with this subchapter;

i. Requests for employer information received directly from an employee or duly authorized representative, in writing, will be honored once the identity of the requestor has been verified. Only information related to the employee's employer shall be released. Persons requesting information must do so in writing indicating the intended use of the information, that the information will be used for the intended purpose only and must also certify in writing that the confidentiality of the disclosed information will be maintained;

ii. Telephone or informal requests are not to be honored;

iii. Written requests from an attorney or other individual who states that he or she is the employer's representative are not to be honored unless the employer provides the Department with a signed and dated authorization for the release of the specified information. Persons requesting information must do so in writing indicating the intended use of the information, that the information will be used for the intended purpose only and must also certify in writing that the confidentiality of the disclosed information will be maintained;

3. To officers or employees of any agency of the Federal government or New Jersey State government which is lawfully charged with the administration, monitoring or enforcement of an employer trip reduction or employee commute option program. Persons or agencies requesting information must do so in writing indicating the intended use of the information, that the information will be used for the intended purpose only and must also certify in writing that the confidentiality of the disclosed information will be maintained;

4. To other interested parties only to the extent and for such purposes that such disclosure will not impede the operation of, and is not inconsistent with, the purposes of the New Jersey Traffic Congestion and Air Pollution Control Act and this subchapter, and as may be expressly authorized by the Commissioner of Transportation. Such persons or agencies requesting information must do so in writing and must also certify in writing that the confidentiality of the disclosed information will be maintained;

5. To employees, employers, the press or media, and the public, disclosure of the number of affected employers by geographic location, as well as the aggregate percentage of employees by mode, and current aggregate APO of affected employers. Such release shall not include numbers of employees, trip reduction strategies, and the incentives identifiable to individual employers. Aggregate data which is not identifiable to individual employers may be released to anyone upon written request to the Department;

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6. Mailing lists developed by the Department, which identify only the name and address of affected employers, shall be released to any interested party. Persons or agencies requesting information must do so in writing indicating the intended use of the list and the medium in which the mailing list is requested. Fees for mailing lists shall be determined by the medium in which it is requested, and the agency cost for duplication;

7. Information related to violations or penalties shall not be considered confidential and may be released upon request;

8. Any citizen or agency requesting information provided for in this subchapter shall refer to N.J.A.C. 16:1-2.2(f) and (g) regarding the sale of public records and costs associated with duplication of such records.

16:50-12.1 Work location audits

To verify implementation of work location programs, the Department shall have the authority to conduct or cause to be conducted audits of an employer's affected location. The Department shall notify an employer with a work location selected for an audit not less than 24 hours in advance of the audit. The employer shall provide the Department access to all records pertaining to the development, implementation, and administration of the ECO program described in the employer's plan, and access to employees at the location.

16:50-12.2 Notice of noncompliance

(a) An affected or registered non-affected employer shall be considered in noncompliance for violations of any provisions of this chapter. An affected employer shall be subject to civil administrative penalties for violations of this chapter. Registered non-affected employers shall lose their designation and shall not be eligible to participate in consolidated plans or APO averaging for violations of this chapter.

(b) Upon determining that a violation has occurred, the Department shall have the authority to issue the affected employer a notice of noncompliance that shall describe the violation, the actions required to correct the violation, the deadline by which the violation shall be corrected, and the penalty that shall be assessed for continued noncompliance. If the affected employer has not corrected the violation by the deadline specified in the notice of noncompliance, the Department shall have the authority to assess penalties in accordance with N.J.A.C. 16:50-12.3.

(c) Upon determining that a violation has occurred, the Department shall have the authority to issue the registered non-affected employer a notice of noncompliance that shall describe the violation, the actions required to correct the violation, the deadline by which the violation shall be corrected, and the consequences for continued noncompliance. If the non-affected employer has not corrected the violation by the deadline specified in the notice of noncompliance, the non-affected employer shall lose its designation and shall not be eligible to participate in consolidated plans or APO averaging.

16:50-12.3 Penalties for noncompliance

(a)-(b) (No change.)

(c) An employer with an affected location that fails to meet the target APO in 1996, but whose 1996 update plan is approved by the Department, shall not be subject to the $5,000 penalty for failure to meet the target APO until one year after the date by which the update plan is required to be filed. An employer with an affected location that fails to meet the target APO in 1996 and who fails to submit an update plan or submits an update plan the Department does not approve, shall be subject to the penalty for failure to reach the target APO in accordance with the provisions of (b) above.

Recodify existing (e) as (d) (No change in text.)

(e) A registered non-affected employer found to be in noncompliance shall not be subject to civil administrative penalties, but shall forfeit its designation as a registered non-affected employer.

16:50-12.4 Noncompliance authority

The Commissioner has the authority, at his or her discretion, to determine if a violation has occurred and the amount of the penalties assessed, if any, not to exceed the maximum amount allowed by law, taking into account the nature, seriousness, and circumstances of the violation, whether there is a pattern of noncompliance, and the good faith efforts that are being made by the employer to achieve compliance.

16:50-13.1 Deadline extensions

An employer that, for reasons beyond its control, is unable to meet a deadline established in this chapter may petition the Department for an extension of the deadline. All requests shall be submitted in writing, be signed by either the highest ranking responsible officer at the site or the Chief Executive Officer of the employer, and include a complete explanation of the circumstances precipitating the request. This explanation should include, but not be limited to, the reasons for the delay, a proposed new commitment date for plan submittal, and the good faith efforts that the employer is undertaking. A request for an extension of any deadline shall be submitted in advance of the deadline. Notwithstanding the date of the request, the Department shall have 30 days from receipt of a complete request to rule on extensions of scheduled deadlines. Extensions may be considered for hardship circumstances or other unusual circumstances that may make it impossible to meet the deadlines established in this chapter.

16:50-13.2 Exemptions

(a) An employer with a work location that meets any of the criteria described in (a)1, 2, or 3 below may apply to the Department for an exemption for that work location from the requirements of this chapter. Requests for exemptions shall be made in writing and shall be signed by the highest ranking responsible officer at the work location or the Chief Executive Officer of the employer.

1. An employer that employs 100 or more employees at a single work location, but that can document that fewer than 33 employees averaged over the immediately preceding 12 month period *[arrive]* ***are scheduled to report*** during the ***employer identified*** peak period; or

2. An affected work location which changes status due to a decrease in employment and that can document that it now employs an average of less than 100 employees for the immediately preceding 12 month period; or

3. An employer with a registered non-affected location that chooses to remove the location from the ETR Program.

16:50-13.3 Waivers

(a) Each affected employer is required to comply with all provisions of this chapter, including the requirement to achieve the target APO as specified in N.J.A.C. 16:50-4. However, an affected employer that would suffer extreme financial hardship may petition the Department for a "hardship" waiver. An employer seeking a hardship waiver must demonstrate, on the basis of evidence submitted to the Department, that the costs of compliance would substantially impair its ability to continue as a going concern. The Department may adjust the terms and conditions of the waiver, and will outline the specific non-financial strategies that an employer will be required to implement, if any. Hardship waivers shall not remove the requirement to achieve the APO target. Hardship waivers may be applied for in the manner described in this subchapter. An affected employer for which a hardship waiver is approved shall not be assessed a penalty for non-compliance.

(b) An affected employer that has implemented an approved plan in "good faith," as defined in N.J.A.C. 16:50-13.5, but that has not achieved the target APO by November 1997, may petition the Department for a "good faith" waiver of the penalty for failure to achieve the target as follows:

1. (No change.)

(c) The Department shall act on a request for any waiver within 120 days of receipt of such a request. If the request cannot be resolved favorably within that period. the Department shall forward the request to the ETRP Review Board for its consideration.

(d) The ETRP Review Board shall consist of five members, which shall include; the Executive Director of the State Planning Commission or his or her designee; one independent certifier; three certifiers shall be selected and serve on a rotating basis; one representative from an environmental interest group; and two affected employers, one from an affected employer having between 100 and 500 employees, two such employer representatives shall be selected, with one serving as the primary representative and one serving as an alternate; and one affected employer having more than 500 employees, two such employer representatives shall be selected, with one serving as the primary representative and one serving as an alternate. All representatives shall be

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selected by the Commissioner. The ETRP Review Board shall review employer requests as a group, with all meetings requiring a quorum of three and make a recommendation based on a majority of those present on the disposition of the request to the Assistant Commissioner for Planning. The Executive Director of the State Planning Commission or his or her designee shall serve as the chairperson of the ETRP Review Board. Each representative to the ETRP Review Board shall be responsible for identifying any conflicts of interest which may arise in the review of requests and shall remove themselves from such review while such conflict or appearance of conflict*[s]* exists. In instances when a conflict of interest is identified, the designated alternate shall participate in the review of the request, unless they also identify a conflict of interest.

(e) Any interested party may submit nominations for the certifier representative. Environmental interest groups may submit nominations of individuals that would serve as their representative to the ETRP Review Board. Any affected employer may nominate representatives from the two categories of employer. The members of the ETRP Review Board shall serve one year terms on the Board, except for the Executive Director of the State Planning Commission, who shall serve for the duration of his or her appointment as Executive Director. All terms shall be served on a calendar year basis, January through December. Persons interested in nominating representatives to the ETRP Review Board should submit their nominations in writing to: W. Dennis Keck, Acting Assistant Commissioner for Planning, New Jersey Department of Transportation, CN 600, Trenton, NJ 08625-0600. Nominations must be submitted by June 1 of each year for the next year's term.

(f) (No change in text.)

16:50-13.4 (Reserved)

16:50-13.5 Definition of "Good Faith Effort"

(a) Each affected employer shall develop and implement an ECO Program in good faith at each affected location. In determining an employer's good faith, the Department shall first consider whether the employer implemented an approved plan in accordance with an approved implementation plan, but may consider any or all of the following additional criteria:

1.-8. (No change.)

16:50-13.6 Scope of waivers

All waiver requests shall be made based on work location.

16:50-14.1 Requirements

(a) (No change.)

(b) A certifier whose approval to certify is revoked shall have the opportunity to appeal such revocation in accordance with the procedures set forth in the New Jersey Administrative Procedures Act (NJAPA), N.J.S.A. 52:14B-1 et seq. An ETC Trainer whose designation as a Department approved trainer is revoked shall have the opportunity to appeal such revocation in accordance with the procedures set forth in the New Jersey Administrative Procedures Act (NJAPA), N.J.S.A. 52:14B-1 et seq. An appeal shall be submitted to the Department in writing not later than 30 days after receipt of notification of the revocation.

(c) The Department shall, if desired by the employer, the ETC Trainer, or the certifier, submit the request for appeal to the ETRP Review Board prior to its disposition through the procedures of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq, and N.J.A.C. 1:1. An employer, ETC Trainer, or certifier is not required to utilize the Review Board, and may choose to appeal directly to the Commissioner through the provisions of the Administrative Procedures Act. The ETRP Review Board, described in N.J.A.C. 16:50-13, shall make a recommendation to the Assistant Commissioner for Planning, of the Department, who shall rule on the request for appeal. If the ruling is not satisfactory to the employer, ETC Trainer, or the certifier, the employer, the ETC Trainer, or the certifier may appeal the ruling of the Assistant Commissioner to the Commissioner as provided for N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1.

OTHER AGENCIES

(a)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

District Zoning Regulations
Zoning of Renewal Areas
Adopted Amendment: N.J.A.C. 19:4-3.3

Proposed: March 6, 1995 at 27 N.J.R. 846(a).

Adopted: May 19, 1995 by the Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.

Filed: May 22, 1995 as R.1995 d.304, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i), and N.J.A.C. 19:4-6.27.

Effective Date: June 19, 1995.

Expiration Date: March 29, 1998.

Summary of Public Comments and Agency Responses:

This matter appeared in the March 6, 1995 issue of the New Jersey Register. In addition, a public notice was published by the HMDC in four newspapers of general circulation. In response to the public notice, the HMDC received telephone inquiries or letters from the following people requesting a copy of the proposed amendments to the regulations: John Agnello, Esq., Carella Byrne; Perry Frenzel, P.E., P.P. of Hartz Mountain Industries; George Cascino, P.E., P.P., of Cascino Engineering; Assemblyman Anthony Impreveduto; the Harmon Cove Association; Ben Lazare of Terminal Construction. Copies of the proposal were sent to all parties requesting same.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing was held at the Offices of the Commission on March 23, 1995 at 7:00 P.M. to receive comments from the public. The hearing was chaired by Thomas Marturano and Ileana Kafrouni of the Engineering staff. An opening statement describing the proposal was read for the record and then the hearing was opened for public comment. A total of five people attended the hearing. Only one person commented and that was John Agnello, Esq. of the firm of Carella Byrne. Mr. Agnello represents one of the property owners of a possible future renewal area within the Town of Kearny. This area is currently being studied by HMDC Staff to determine if the Commission should proceed with the process established by N.J.S.A. 13:17-20 to declare an area in need of redevelopment. All of his comments dealt specifically with the Kearny project. He was informed that these regulations were general in nature and applicable to all future renewal areas. However, in response to his specific questions, staff explained that the Kearny project was delayed because the Commission had to develop these regulations before it could take action on the Kearny renewal area. The Commission's studies for the Kearny area have been completed and the public hearing required by Statute to discuss the possibility of declaring the Kearny site as a renewal area are expected to take place June of 1995. Mr. Agnello stated that he and his clients were in favor of the proposed amendments to the regulations. The hearing officers recommended the adoption of the amendments as proposed, with the technical change noted below. The hearing record may be reviewed by contacting Ileana Kafrouni, Supervisor of Site Plan Review, Hackensack Meadowlands Development Commission, One DeKorte Park Plaza, Lyndhurst, NJ 07071-3799.

Letter submitted subsequent to the public hearing:

On April 5, 1995 the HMDC received a letter from Deborah I. Hollander, Esq., on behalf of Hudson Meadows Urban Renewal Development Corporation, a property owner within the Hackensack Meadowlands Development Commission's District. Ms. Hollander made the following comments:

COMMENT: Under the proposal, the HMDC would be empowered to establish development standards after the area has been designated a renewal zone. ". . . [T]he New Jersey Legislature clearly intended the public to be fully informed of the consequences of declaring a particular area as an urban renewal zone, and be given an opportunity to comment on such consequences

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before the HMDC's final designation. This is made clear by the legislative mandate that HMDC hold an evidentiary hearing to support such determination, and by granting of interested persons the right of review by Prerogative Writ. N.J.S.A. 13:17-20. If a major purpose of a declaration of urban renewal is to adjust the zoning, then the precise impact of zoning should be known and included in the discussion preceding designation."

RESPONSE: Pursuant to the procedures provided under N.J.S.A. 13:17-20, the Commission has the power to declare any portion of the District as a renewal area. However, prior to the Commission making this declaration, it must find that the area meets the conditions of "blight" as defined by State Law. In order to accomplish this, the Commission must do the following:

1. The Commission must adopt a resolution authorizing staff to prepare a map of the area in question and a report setting forth the reasons for the investigation.
2. The Commission must then hold a hearing to receive public comment.
3. After considering all comments, either in support or in opposition, the Commission, shall determine, by resolution, if the area in question should or should not be designated as a renewal area.
4. If the determination is made to designate the tract as a renewal area, then the Commission is authorized to create redevelopment plan in accordance with N.J.S.A. 13:17-20(g) and 21.

It is apparent from the sequence of events described above that the HMDC's enabling legislation establishes the procedures for the creation and planning of renewal areas which can not be altered through rulemaking. The HMDC is required to make a declaration of blight before presenting a redevelopment plan (which would include any zoning changes) to the public. Therefore, the proposed rule amendment can not and does not affect the procedure prescribed by the HMDC's enabling act.

COMMENT: ". . . [T]he proposed regulation is ambiguous as to whether the buildability requirements would be set on a 'case by case' basis, meaning 'area by area' or property by property—allowing the HMDC to set buildability requirements for individual properties. The latter interpretation would improperly constitute spot zoning. Thus, the regulation should specify that the buildability requirements would be area wide."

RESPONSE: The development standards will be applicable to the entire tract which is designated as a renewal area. However, since the Commission has the power to establish any portion of the District as a renewal area, it is possible that one lot be designated as a renewal area. In this case the development standards would be applicable to only one "property" or lot and would not constitute spot zoning.

COMMENT: "Since the intent of the proposal is to encourage development, the HMDC seeks to assure that it will not use the power to make separate building requirements for urban renewal districts to reduce buildability. However, these assurances are made within HMDC's explanatory material; they should be integrated into the regulations themselves."

RESPONSE: The intent and purpose of granting the Commission redevelopment powers is clear in its enabling legislation. Inherent to the procedures established by the legislature is the concept of stimulating growth and economic development in areas that have remained stagnant for decades. "Explanatory" material is a rule making requirement and was submitted as part of the Notice of Proposal. The Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and its implementing rules, N.J.A.C. 1:30, do not require such explanatory information to be included as part of the text of a regulation if the information does not contain requirements which will be imposed on the regulated public. In this instance, the HMDC's assurances that the proposed rule would not be used to reduce buildability was included merely to help the public understand the intent of the proposed rule. This explanatory information does not seek to impose any requirements on the regulated public, and is thus not required to be included in the text of the rule.

COMMENT: ". . . [T]his proposed rulemaking was developed by HMDC's solid waste department, rather than its land use section. These functions should remain distinct so that the public may be confident that the HMDC is not using its power to regulate property owners to advance its own facilities and projects."

RESPONSE: The amendments to the regulations were prepared by the Engineering and Planning staffs of the Commission and not the Solid Waste Department.

The record was closed on April 5, 1995.

Summary of Changes Upon Adoption:

There was a typographical error in the Notice of Proposal submitted to the Office of Administrative Law. The word "or" was submitted instead of the word "of."

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

19:4-3.3 Zoning of public ways, waterways, railroad rights-of-way and renewal areas

(a)-(c) (No change.)

(d) Applicable use and bulk requirements for an area within the District, designated as a renewal area in accordance with N.J.S.A. 13:17-20, shall be established on a case by case basis and, once adopted by the Commission, shall supersede zoning regulations in this chapter. Once an area is designated as a renewal area, a public hearing shall be held in order to receive comment on the development standards that would be applicable to the area. Said public hearing shall be in accordance with N.J.A.C. 19:4-6.22. Notification shall be by certified mail and shall go to all property owners within the renewal area and the owners of property and appropriate officials *[or]* ***of*** constituent municipalities within 500 feet of the renewal area as shown on the most recent tax lists of the municipality in which the subject property is situated and any adjacent municipalities.

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Contested Transfer Determinations

Adopted New Rules: N.J.A.C. 19:18

Proposed: March 6, 1995 at 27 N.J.R. 847(a).

Adopted: May 23, 1995 by the Public Employment Relations Commission, James W. Mastriani, Chairman.

Filed: May 25, 1995 as R.1995 d.316, **without change**.

Authority: N.J.S.A. 34:13A-11 and 34:13A-22 et seq.

Effective Date: June 19, 1995.

Expiration Date: June 19, 2000.

Summary of Public Comments and Agency Response:

No comments received. N.J.A.C. 19:18 expired May 21, 1995; pursuant to N.J.A.C. 1:30-4.4(g), the rules proposed for readoption with amendments are adopted herein as new rules.

Executive Order No. 27 Statement

The National Labor Relations Act specifically excludes from its coverage "any State or political subdivision thereof," 29 U.S.C. §152(2). Thus no Federal law or regulation applies to the subject matter of these rules, the transfer of an employee, as defined by N.J.S.A. 34:13A-22, between worksites for disciplinary reasons. As there is no comparable Federal rule or standard upon which the Commission can rely to achieve the aim of N.J.S.A. 34:13A-22 et seq., the readoption of these rules is necessary and proper.

Full text of the rules proposed for readoption adopted herein as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 19:18.

Full text of the adopted amendments follows:

19:18-2.2 Contents of petition for contested transfer determination

(a) A petition[1] shall be in writing and the party or representative filing the petition shall make this dated and signed certification: "I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief."

(b) (No change.)

---

[1](No change.)

19:18-2.3 Timeliness of petitions

The petitioner shall file a petition no later than the 90th day from the date of receipt of a notice of transfer.

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(a)

CASINO CONTROL COMMISSION

General Provisions
Construction and Application of Rules; Definitions
Applications
License and Registration Requirements; Scope and Applicability; Position Endorsements; Experience and Training Requirements; Qualification Standards: Table Games Positions
Standards for Qualification; Employee Standards
Forms; Personal History Disclosure Forms
Information; Application for the Issuance of Employee Licenses or Registrations and Natural Person Qualification
Fees; Employee License Position Additions and Deletions
Casino Licensees
Employment Requirements; Employee Experiential Hours; Petitions for Casino Hotel Employee Registration
Internal Controls
General Provisions; Casino Licensee's Organization; Persons Assigned to the Operation and Conduct of Gaming and Slot Machines
Rules of the Games
Double Down Stud; Supervision Requirements; Required Training and License Endorsements
Equal Employment and Business Opportunity; Designation of Equal Opportunity Officer

Adopted Repeals: N.J.A.C. 19:41-1.5A, 1.8, 1.9 and 9.16; and 19:43-9.4
Adopted Amendments: N.J.A.C. 19:40-1.2; 19:41-1.5, 4.3, 5.2 through 5.5, 7.1A, 7.1B, 8.8 and 9:15; 19:43-9.5; 19:45-1.11 and 1.12; 19:47-17.7; 19:51-1.3 and 19:53-1.4

Proposed: March 20, 1995 at 27 N.J.R. 1162(a).
Adopted: May 19, 1995 by the Casino Control Commission, Bradford S. Smith, Chairman.
Filed: May 23, 1995 as R.1995 d.306, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 5:12-63c, 69a, 70a, 80, 89 and 90 and P.L. 1995-18.
Effective Date: June 29, 1995.
Expiration Dates: August 15, 1999, N.J.A.C. 19:40;
April 13, 2000, N.J.A.C. 19:41;
December 21, 1997, N.J.A.C. 19:43;
August 15, 1997, N.J.A.C. 19:45;
April 15, 1996, N.J.A.C. 19:47;
August 15, 1996, N.J.A.C. 19:51;
December 15, 1995, N.J.A.C. 19:53.

Summary of Agency-Initiated Changes:
The proposed repeals and amendments were intended to delete all references to employee license position endorsements, consistent with the legislature's elimination of that process. One such deletion in N.J.A.C. 19:45-1.11(b)8iv was inadvertently omitted from the proposal and is deleted upon adoption. Also, the proposed amendments to N.J.A.C. 19:45-1.12(a) should have deleted only the language referring to the requisite position endorsements, not the requisite employee license. While position endorsements have been eliminated, the employee functions described must obviously be performed by persons holding the appropriate employee license; language to that effect in N.J.A.C. 19:45-1.12(a) is retained in the adoption. In addition, the codification of N.J.A.C. 19:41-1.5(a) is corrected upon adoption. Finally, technical modifications to N.J.A.C. 19:41-7.1A, 19:45-1.11 and 19:45-1.12 indicate amendments adopted subsequent to the publication of this proposal.

Summary of Public Comments and Agency Responses:
Comments were received from the Division of Gaming Enforcement (Division) and the Sands Hotel & Casino (Sands).
COMMENT: The Division stated its general support for the proposal.
RESPONSE: Accepted.
COMMENT: The Sands suggests that the Casino Control Commission's (Commission) record retention requirements at N.J.A.C. 19:45-1.8(c) be amended to eliminate the requirement that casino licensees retain indefinitely records of hours worked by employees in gaming-related positions.
RESPONSE: The Commissioin agrees that, in light of the elimination of its position endorsement and experiential requirements, the records retention rules should be so amended. Such amendment will be considered by the Commission in a future proposal.

Executive Order No. 27 Statement
An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Casino Control Commission are dictated by the New Jersey Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

19:40-1.2 Definitions
(a) (No change.)
(b) The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise:
. . .
Audit department executive is defined in N.J.A.C. 19:41-1.11(b)2.
. . .
Casino manager is defined in N.J.A.C. 19:45-1.11(b)4 and 1.12(b)9.
. . .
Credit manager is defined in N.J.A.C. 19:45-1.11(b)6.
Director of security is defined in N.J.A.C. 19:45-1.11(b)7.
Director of surveillance is defined in N.J.A.C. 19:45-1.11(b)1.
. . .
MIS department manager is defined in N.J.A.C. 19:45-1.11(b)3.
. . .
Slot department manager is defined in N.J.A.C. 19:45-1.11(b)5 and 1.12(h)5.
. . .

19:41-1.5 Scope and applicability of employee licensing and registration requirements
*[(c)]***(a)*** In determining whether a natural person who will provide services to a casino licensee or applicant must hold a license or registration as an employee or, alternatively, be registered as a vendor or junket enterprise pursuant to N.J.A.C. 19:43-10.4, it shall be presumed that any such person will be required to hold the appropriate license or registration as an employee if the provision of services by such person is characterized by any of the following indicia of an employment relationship:
1.-6. (No change.)
(b) (No change in text.)
(c) The Commission may, upon consideration of the factors in (a)1 through 6 above and any other relevant information, require any natural person to obtain an employee license or registration prior to providing or continuing to provide any services to a casino licensee or applicant notwithstanding:
1. (No change.)
2. That a vendor registration form or junket enterprise registration form has been filed by a casino licensee or applicant on behalf of the natural person pursuant to N.J.A.C. 19:43-10.4.

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19:41-4.3 Employee standards

(a) The employee standards set forth in Sections 89, 90 and 91 of the Act and the regulations of the Commission are as follows:

1. (No change.)

2. The good character and reputation of the person for honesty and integrity; and

3. The age of the person.

19:41-5.2 Personal History Disclosure Form 1A (Casino Key Employee/Qualifier Form)

(a) (No change.)

(b) In addition to the information in (a) above, a completed PHD-1A may include the following:

1. The name, address, occupation and phone number of persons who can attest to the applicant's good character and reputation;

2.-3. (No change.)

19:41-5.3 Personal History Disclosure Form 1B (Basic Key Form)

(a) A Personal History Disclosure Form 1B (Basic Key Form or PHD-1B) shall be in a format prescribed by the Commission and may require the applicant to provide the following information:

1.-6. (No change.)

Recodify existing 8. through 15. as 7. through 14. (No change in text.)

(b) In addition to the information in (a) above, a completed PHD-1B may include the following:

1. The name, address, occupation and phone number of persons who can attest to the applicant's good character and reputation;

2.-3. (No change.)

19:41-5.4 Personal History Disclosure Form 2A (Casino Employee License Application)

(a) A Personal History Disclosure Form 2A (Casino Employee License Application or PHD-2A) shall be in a format prescribed by the Commission and may require the applicant to provide the following information:

1.-6. (No change.)

Recodify existing 8. through 15. as 7. through 14. (No change in text.)

(b) In addition to the information in (a) above, a completed PHD-2A may include the following:

1. The name, address, occupation and phone number of persons who can attest to the applicant's good character and reputation;

2.-3. (No change.)

19:41-5.5 Personal History Disclosure Form 4A (Casino Service Employee Registration Application)

(a) A Personal History Disclosure Form 4A (Casino Service Employee Registration Application or PHD-4A) shall be in a format prescribed by the Commission and may require the applicant to provide the following information:

1.-10. (No change.)

(b) (No change.)

19:41-7.1A Application for the issuance of employee licenses or registrations and natural person qualification

(a) An application for the initial issuance of an employee license or registration or for individual qualification shall include the following:

1. A completed original and one photocopy of the appropriate *[Personal History Disclosure (PHD) Form or Qualifier Disclosure Form (QDF)]* ***disclosure form***, as follows:

i.-ii. (No change.)

iii. An applicant for a casino service employee registration shall file a PHD-4A as set forth in N.J.A.C. 19:41-5.5;

iv.-v. (No change.)

vi. An applicant required to qualify pursuant to subsections 92a and b of the Act by virtue of his or her position with a casino service industry enterprise or gaming school shall file a PHD-1A as set forth in N.J.A.C. 19:41-5.2; *[and]*

vii. An applicant required to qualify pursuant to subsection 92c of the Act by virtue of his or her position with a casino service industry enterprise shall file a QDF as set forth in N.J.A.C. 19:41-5.9. If such enterprise is required to be licensed pursuant to N.J.A.C. 19:51-1.2A(f), the applicant shall also provide two copies of his or her Federal tax returns and related documents*[.]****; and***

viii. An applicant required to qualify pursuant to N.J.S.A. 5:12-93 by virtue of his position with a labor organization, union or affiliate shall file a Labor Organization Individual Disclosure Form as set forth in N.J.A.C. 19:41-5.14.

2.-5. (No change.)

(b)-(d) (No change.)

19:41-7.1B Application for casino service employee registration; filing requirements

(a) No casino service employee registration shall be issued by the Commission unless:

1.-2. (No change.)

(b) A completed application for casino service employee registration as set forth in N.J.A.C. 19:41-7.1A shall be filed as follows:

1.-2. (No change.)

19:41-8.8 Reapplication by natural person after denial or revocation

(a) (No change.)

(b) Any natural person whose licensure, registration, qualification or approval is denied or revoked by the Commission on the basis of any of the statutory or regulatory provisions specified in (b)1 through 5 below may reapply for licensure, registration, qualification or approval upon satisfaction of the relevant requirements stated below. If the denial or revocation was based upon two or more statutory or regulatory provisions, the Commission shall permit reapplication only upon compliance with the requirements of this subsection as to each such provision. Any person seeking to reapply pursuant to this subsection shall file a certified petition stating with particularity the satisfaction of the specified requirements.

1. (No change.)

Recodify existing 3. through 6. as 2. through 5. (No change in text.)

(c)-(d) (No change.)

19:41-9.15 Casino service employee registration fee

(a) Under section 91 of the Act, no person may be employed as a casino service employee unless such person is registered with the Commission. A casino service employee registration shall remain in effect unless revoked, suspended, limited, or otherwise restricted by the Commission in accordance with the provisions of the Act. The one time registration fee for a casino service employee shall be $60.00.

(b) (No change.)

19:43-9.5 Petitions for casino service employee registration

(a) In accordance with N.J.S.A. 5:12-91f, no casino service employee registration shall be issued by the Commission except upon the petition of a casino licensee or applicant. Such petition shall be in writing and shall include the following:

1.-3. (No change.)

4. Either of the following:

i. A completed application for casino service employee registration as set forth in N.J.A.C. 19:41-7.1A, which shall be accompanied by a written statement, signed and dated by the applicant for registration and an authorized representative of the casino licensee or applicant, authorizing the casino licensee or applicant to file the application on behalf of the applicant for registration; or

ii. (No change.)

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments and supervisory positions are as follows:

1. A surveillance department supervised by a person referred to herein as the director of surveillance. The director of surveillance shall be subject to the reporting requirements specified in (c) below. The surveillance department shall be responsible for, without limitation, the following:

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i.-xii. (No change.)

2. An internal audit department supervised by a person referred to herein as an audit department executive. The audit department executive shall be subject to the reporting requirements specified in (c) below. The internal audit department shall be responsible for, without limitation, the following:

i.-v. (No change.)

3. A management information system ("MIS") department supervised by a person referred to herein as an MIS department manager. The MIS department shall be responsible for the quality, realiability and accuracy of all computer systems used by the casino licensee in the conduct of casino and casino simulcasting facility operations including, without limitation, specification of appropriate computer software, hardware, and procedures for security, physical integrity, audit, and maintenance of:

i.-iii. (No change.)

4. A table games department supervised by a person referred to herein as a casino manager. The table games department may be responsible for the operation and conduct of the simulcast counter and shall be responsible for the operation and conduct of the following games:

i.-xi. (No change.)

5. A slot department supervised by a person referred to herein as a slot department manager. The slot department shall be responsible for the operation of the slot machines and bill changers.

6. A credit department supervised by a person referred to herein as a credit manager. The credit department shall be responsible for the credit function including, without limitation, the following:

i.-iv. (No change.)

7. A security department supervised by a person referred to herein as a director of security. The security department shall be responsible for the overall security of the establishment including, without limitation, the following:

i.-xi. (No change.)

8. A casino accounting department supervised by a person referred to herein as a controller. The controller may be responsible for the operation and conduct of the simulcast counter and, except as otherwise provided in *[N.J.A.C. 19:45-1.11]*(b)9 ***below***, shall *[also]* be responsible for the control and supervision of the *[cashier's]* ***cashiers'*** cage and any satellite cages. The casino accounting department shall be responsible for, without limitation, the following:

i.-iii. (No change.)

iv. The cashiers' cage, which shall be supervised by a casino key employee *[holding a license endorsed with the position of cage manager]*. The supervisor of the cashiers' cage shall report to the supervisor of the casino accounting department and shall be responsible for the control and supervision of cage and slot cashiers, changepersons and casino clerks. The cashiers' cage may be separated into independent operations for table games and slot machines. If a casino licensee elects to operate both a table games cage and a slot machine cage, each independent cage operation shall be supervised by a casino key employee *[holding a license endorsed with the position of cage manager]* and each cage manager shall report to the supervisor of the casino accounting department. The supervisor of an independent slot machine cage shall be responsible for the supervision of the master coin bank, slot cashiers, changepersons and coin impressment personnel. The supervisor of an independent table games cage shall be responsible for all remaining cashiers' cage functions. If a casino licensee elects to operate one or more satellite cages, each satellite cage shall be supervised by a casino key employee *[holding a license whose endorsement shall depend upon the functions performed by the satellite cage]*. The cashier's cage shall be responsible for, without limitation, the following:

9.-10. (No change.)

(c)-(e) (No change.)

(f) Notwithstanding the provisions of (b)4 above and N.J.A.C. 19:45-1.12, a casino licensee may operate and conduct the game of poker separately from the other table games. If a casino licensee elects to operate the game of poker as its own unit, the operation and conduct of poker shall be the responsibility of a casino key employee. The supervisor of the poker unit shall report directly to the casino manager or to a casino key employee in a direct reporting line above the casino manager as approved by the Commission.

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) Each casino licensee shall be required to employ the personnel herein described in the operation of its casino and casino simulcasting facility, regardless of the position titles assigned to such personnel by the casino licensee in its approved jobs compendium. ***Functions described in this section shall be performed only by persons holding the appropriate license required by the casino licensee's approved jobs compendium to perform such functions, or by persons holding the appropriate license required by the casino licensee's approved jobs compendium to supervise persons performing such functions,*** and subject to the limitations imposed by N.J.A.C. 19:45-1.11(a). Each casino licensee shall at all times maintain a level of staffing which ensures the proper operation and effective supervision of all table games in the casino and casino simulcasting facility.

(b)-(i) (No change.)

***(j) The following personnel, at a minimum, shall be used at keno:**

1. Keno writer shall be the person assigned the responsibility to generate keno tickets, redeem coupons, accept wagers and issue keno payouts at a keno booth or satellite keno booth.

2. Keno supervisor shall be the supervisor assigned to each shift with the responsibility for directly supervising all activities at a keno booth.

3. Keno manager shall be the executive assigned the responsibility and authority for the supervision and management of the overall operation of the game of keno by the casino licensee, including, without limitation, the hiring and terminating of all keno personnel in accordance with the policies and practice established by the casino licensee. Nothing in these rules shall preclude the keno manager from also having the responsibility to manage either the table games department or the slot department, provided that the reporting lines and span of control of the keno manager have been approved by the Commission. The keno manager may not function simultaneously as a simulcast counter manager.*

*[(j)]****(k)*** (No change.)

19:47-17.7 Supervision requirements; required training and license endorsements

For purposes of complying with the organizational and supervision requirements of N.J.A.C. 19:45-1.11 and 1.12, the number of personnel required for each double down stud table shall be the same as that required for a blackjack table.

19:51-1.3 Standards for qualifications

(a) (No change.)

(b) Each applicant required to be licensed as a casino service industry in accordance with subsections 92a and b of the Act, except as otherwise required for gaming schools (see N.J.A.C. 19:44, shall, prior to the issuance of any casino service industry license, produce such information, documentation and assurances to establish by clear and convincing evidence:

1.-2. (No change.)

Recodify existing 4. through 6. as 3. through 5. (No change in text.)

(c)-(e) (No change.)

19:53-1.4 Designation of equal opportunity officer by casino licensee or applicant; responsibility of chief executive officer and equal opportunity officer

(a) Each casino licensee or applicant shall designate a principal member of its organization to serve as an equal opportunity officer. A casino license applicant shall designate its equal opportunity officer prior to the start of actual construction by the applicant or by any affiliated entity of any structure or facility to be used as an approved casino hotel, or prior to the recruitment and employment of personnel necessary to undertake the business of the hotel or casino, whichever first occurs. The chief executive officer shall be ultimately responsible for insuring that equal employment opportunity is afforded to all prospective and actual employees, that equal business opportunity is afforded to all persons, that affirmative efforts are made to recruit and employ women and minorities for positions in which the licensee or applicant is below the applicable employment goals, that the casino licensee makes affirmative efforts to

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achieve the applicable participation goals for business with certified and provisionally certified MBEs and WBEs, that a policy advocating the employment and advancement of persons with disabilities is promulgated and enforced, and that the licensee or applicant achieves full implementation of its approved EEBOP. The equal opportunity officer shall be directly responsible for the organization and effective and continuing implementation of its approved EEBOP. The position of equal opportunity officer shall require a casino key employee license.

(b)-(f) (No change.)

(a)

CASINO CONTROL COMMISSION

Applications

Application for the Issuance of Employee Licenses, Registrations and Natural Person Qualification; Junket Representative License Fees; Contents of Renewal Application

Junkets

Definitions; Junket Representatives; Junket Enterprises; Junket Final Reports; Monthly Reports: Non-Junket Gaming Arrangements; Purchases of Patron Lists; Monthly Reports: Employee Junket Activities

Adopted Amendments: N.J.A.C. 19:41-7.1A, 9.11A, 14.3 and 19:49-1.1, 2.1, 2.2, 3.3, 3.5 and 3.6

Adopted Repeal: N.J.A.C. 19:49-3.4

Proposed: March 20, 1995 at 27 N.J.R. 1168(a).

Adopted: May 19, 1995 by the Casino Control Commission, Bradford S. Smith, Chairman.

Filed: May 23, 1995 as R.1995 d.307, **with technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63c and d, 69a, 70a and e, 92 and 102.

Effective Date: June 19, 1995.

Expiration Dates: April 13, 2000, N.J.A.C. 19:41;
September 18, 1997, N.J.A.C. 19:49.

Summary of Agency-Initiated Changes:

Technical changes have been made to take into account intervening regulatory changes concerning the disclosure forms which qualifiers of labor organizations are required to file. (See N.J.A.C. 19:41-7.1A notice of adoption published elsewhere in this issue of the New Jersey Register.)

Summary of Public Comments and Agency Responses:

COMMENT: Comments were received from the Division of Gaming Enforcement (Division) which generally support the recommended amendments and repeal. However, the Division suggests that the Commission amend N.J.A.C. 19:51-1.3 to specifically state that a junket representative employed by the affiliate of a casino licensee will only be required to be qualified to casino key employee standards if he or she is also a principal employee of the affiliate.

RESPONSE: The Commission agrees that junket representatives employed by an affiliate of a casino licensee need only be licensed to casino employee standards unless such person also holds a management or supervisory position which would require him or her to qualify to casino key employee standards. However, the Division's suggested amendment must be separately published for comment. The Commission will address this issue in a future proposal.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Casino Control Commission are directly dictated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

19:41-7.1A Application for the issuance of employee licenses or registrations and natural person qualification

(a) An application for the initial issuance of an employee license or registration or for individual qualification shall include the following:

1. A completed original and one photocopy of the appropriate *[Personal History Disclosure (PHD) Form or Qualifier Disclosure Form (QDF)]* ***disclosure form***, as follows:

i. An applicant for a casino key employee license, resident director license or an applicant required to qualify pursuant to subsection 102c of the Act by virtue of his or her position with a junket enterprise shall file a PHD-1B as set forth in N.J.A.C. 19:41-5.3;

ii. An applicant for a casino employee license, gaming school employee license or junket representative license shall file a PHD-2A as set forth in N.J.A.C. 19:41-5.4;

iii.-v. (No change.)

vi. An applicant required to qualify pursuant to subsections 92a and b of the Act by virtue of his or her position with a casino service industry enterprise or gaming school shall file a PHD-1A as set forth in N.J.A.C. 19:41-5.2; *[and]*

vii. An applicant required to qualify pursuant to subsection 92c of the Act by virtue of his or her position with a casino service industry enterprise shall file a QDF as set forth in N.J.A.C. 19:41-5.9. If such enterprise is required to be licensed pursuant to N.J.A.C. 19:51-1.2A(f), the applicant shall also provide two copies of his or her Federal tax returns and related documents*[.]***; and**

viii. An applicant required to qualify pursuant to N.J.S.A. 5:12-93 by virtue of his or her position with a labor organization, union or affiliate shall file a Labor Organization Individual Disclosure Form as set forth in N.J.A.C. 19:41-5.14.*

2.-5. (No change.)

(b)-(d) (No change.)

19:41-9.11A Junket representative license term and fees

(a) In accordance with N.J.S.A. 5:12-102b, all junket representatives employed by a casino licensee, an applicant for a casino license or an affiliate of a casino licensee shall meet the standards established for casino employees, except for residency, in order to be licensed. Pursuant to N.J.S.A. 5:12-94d, such a license shall be issued for an initial term of three years and for a term of four years for all subsequent renewals.

(b) The issuance fee for an initial three year licensee shall be $350.00. The renewal fee for a four year license shall be $250.00.

9:41-14.3 Contents of renewal application

(a) (No change.)

(b) In addition to the materials identified in (a) above, an application for the renewal of a casino key employee license or a gaming school-resident director license shall include:

1.-2. (No change.)

(c) In addition to the materials identified in (a) above, an application for the renewal of a junket representative license shall include, in a form required by the Commission, designation of an agent to receive service of process in this State and an affirmation that the applicant submits to the jurisdiction of this State.

19:49-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Agent" means any person, including a junket representative, junket enterprise or casino employee acting as a junket representative, acting directly or indirectly on behalf of a casino licensee or an affiliate of a casino licensee.

. . .

19:49-2.1 Junket representatives

(a) A junket representative, as defined in the Act, is any natural person who negotiates the terms of, engages in the referral, procurement or selection of persons who may participate in any junket to a licensed casino, regardless of whether or not those activities occur within the State

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of New Jersey. If a person performs any one of these functions in connection with a junket to a licensed casino, that person is a junket representative for the purposes of the Act and this chapter.

(b) The fact that a person licensed as a casino employee may, pursuant to N.J.S.A. 5:12-102 and (c)3 below, act as a junket representative while employed by a casino licensee or affiliate of a casino licensee does not excuse the casino licensee, affiliate of a casino licensee or any other person from meeting any other licensing, registration or reporting obligation which may exist as a result of the conduct of the junket activity.

(c) Except as otherwise provided by N.J.S.A. 5:12-102o, no person shall act as a junket representative in connection with a junket to a licensed casino unless he or she:

1. Has been plenarily or temporarily licensed as a junket representative in accordance with the provisions of section 102 of the Act and is employed by a licensed casino or an affiliate of a casino licensee;

2. (No change.)

3. Is the holder of a current and valid casino employee license, is currently employed by the casino licensee or affiliate of the casino licensee for whom such junket representative services are being rendered and is reported to the Division in accordance with the requirements of N.J.A.C. 19:49-3.6, or

4. Is employed as a junket representative by a junket enterprise which is licensed in accordance with the provisions of section 102 and subsection 92(c) of the Act, N.J.A.C. 19:41 and 19:51 and this chapter, or by a junket enterprise which is registered as a junket enterprise vendor in accordance with the provisions of N.J.A.C. 19:43-10.4 and this chapter.

(d) A junket representative may only be employed by one casino licensee, an affiliate of a casino licensee or junket enterprise at a time. For the purposes of this section, to qualify as an employee of a casino licensee, a junket enterprise licensee or a junket enterprise vendor, a junket representative must:

1.-2. (No change.)

(e) (No change.)

19:49-2.2 Junket enterprises

(a) (No change.)

(b) A junket enterprise shall be registered as a junket enterprise vendor in accordance with the provisions of N.J.A.C. 19:43-10.4 and this chapter or licensed as a junket enterprise in accordance with the provisions of N.J.S.A. 5:12-92(c), 5:12-102 and N.J.A.C. 19:41 and 19:51 prior to a casino licensee permitting a junket involving that junket enterprise to arrive at its casino. A junket enterprise shall be considered "involved" in a junket to a licensed casino if it receives any compensation whatsoever from any person as a result of the conduct of the junket. No casino licensee or junket enterprise may engage the services of any junket enterprise which has not been so registered or licensed.

19:49-3.3 Junket final reports

(a)-(b) (No change.)

(c) A final report shall include:

1.-2. (No change.)

19:49-3.4 (Reserved)

19:49-3.5 Purchases of patron lists

(a) Each casino licensee, affiliate of a casino licensee, junket representative or junket enterprise shall prepare and maintain a report with respect to each list of names of junket patrons or potential junket patrons purchased from any source whatsoever.

(b)-(c) (No change.)

(d) If a list of names of junket patrons or potential junket patrons has been compiled in whole or in part by selecting the names included therein on a "basis related to their propensity to gamble," as the phrase is defined in N.J.A.C. 19:49-1.2, the seller of such list shall be appropriately licensed or registered in accordance with the provisions of N.J.S.A. 5:12-102, 5:12-92(c), N.J.A.C. 19:41, 19:43-10.4, 19:51 and this chapter prior to engaging in such sale. No casino licensee, affiliate of a casino licensee or junket enterprise shall purchase a list of names compiled in such fashion unless the seller has been so licensed or registered.

19:49-3.6 Monthly reports: employee junket activities

Each casino licensee shall, on or before the 15th day of the month, prepare and maintain a report listing the name and license number of each person employed by that casino licensee or an affiliate of a casino licensee who performed the services of a junket representative during the preceding month. The report shall be maintained by the casino licensee on the premises of its casino hotel and made available to the Division for inspection.

(a)

CASINO CONTROL COMMISSION

Casino Licensees

Standards for Licensure; Undue Economic Concentration

Adopted New Rule: N.J.A.C. 19:43-3.1

Proposed: April 17, 1995 at 27 N.J.R. 1532(a).

Adopted: May 19, 1995 by the Casino Control Commission, Bradford S. Smith, Chairman.

Filed: May 23, 1995 as R.1995 d.308, **with substantive changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 5:12-63c, 69a, 82e.

Effective Date: June 19, 1995.

Expiration Date: December 21, 1997.

Summary of Agency-Initiated Changes:

The list of proposed criteria in N.J.A.C. 19:43-3.1(c)1 included the percentage share of the market presently controlled by the applicant in several categories, including "total square footage of the casino hotel and related facilities." However, the relevant facilities criteria are otherwise covered in subparagraphs (c)1ii (casino and simulcasting facility) and (c)1iv (guest rooms); subparagraph (c)1iii (casino hotel and related facilities) is thus not included in the adopted new rule. Also, the term "additional" is deleted from paragraph (c)2, since subsection 82e of the Act refers not only to the issuance of an additional casino license, but also to the "holding" of a license.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division) and from Harrah's Atlantic City (Harrah's).

COMMENT: The Division finds a "fundamental problem" with the proposal in that it "just sets forth the factors the Commission will consider in determining the existence of undue economic concentration" and "only codifies standards previously developed and utilized by the Commission in an adjudicative context." The Division suggests that the rule also address various procedural issues "to avoid ad hoc adjudicative resolution" thereof: whether undue economic concentration is an issue in every casino licensing matter; which party has the burden of proof; the applicable standard of proof; which party has the burden of going forward on the issue; and whether expert evidence is necessary and if so, which party has the burden of producing such evidence in the first instance.

RESPONSE: Subsection 82e states that "[n]o person shall be issued or be the holder of a casino license if the issuance or holding results in undue economic concentration in Atlantic City casino operations by that person." As such, the express language of the statute compels the Commission to consider undue economic concentration in every casino licensing matter.

As directed by the Act, the proposal provides rules "defining the criteria the [C]ommission will use in determining what constitutes undue economic concentration." N.J.S.A. 5:12-82e. As with any other standard for casino licensure, the manner in which this and any other evidence is presented to and explained to the Commission in a license hearing is governed by the Uniform Rules of Administrative Procedure, N.J.A.C. 1:1 and Commission rules at N.J.A.C. 19:42 (Hearings) and 19:43 (Casino Licensees).

COMMENT: The Division would include a "triggering mechanism" which would put undue economic concentration into issue at the casino license or renewal hearing and require that the applicant go forward with evidence to establish that its application would not result in undue economic concentration. The suggested provision would require that the applicant

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introduce expert evidence by way of written report or testimony to address the relevant criteria.

RESPONSE: The language of subsection 82e compels the Commission to examine the issue of undue economic concentration before issuing a license. In the majority of casino application matters, this should not be a complex or burdensome matter to address. Whether an economic concentration issue exists or an expert opinion is needed could more effectively be identified during the prehearing conference.

COMMENT: The Division submits that its suggestion for a "triggering mechanism" is analogous to the U.S. Department of Justice guidelines for determining market concentration, which utilize the "Herfindahl-Hirschman Index" (HHI) to determine whether a particular market in unconcentrated, moderately concentrated or highly concentrated.

RESPONSE: The degree of market concentration is only a threshold issue under section 7 of the Clayton Act, 15 U.S.C.A. sec. 18. The HHI indicates the extent of concentration in the relevant market and, thus, whether additional, broader analysis of other factors is merited to determine if an acquisition will substantially lessen competition or create a monopoly. Under subsection 82e of the Casino Control Act, the only relevant issue is whether "undue" economic concentration will result from issuance of a license. The Division fails to suggest any particular percent share of the market or any degree of market concentration that it would deem "undue" so as to withhold the issuance or renewal of a casino license. Under the new rules, the Commission will consider all relevant aspects of the Atlantic City casino market in determining whether any particular degree of economic concentration is "undue," rather than simply focus on a figure arbitrarily chosen to represent undue market concentration. This is consistent with the generally accepted notion that there is no precise numerical figure for impermissible economic concentration but rather, that the relative effect of percentage command of a market varies with the setting in which the factor is placed. See, e.g., *United States v. Columbia Steel Co.,* 334 *U.S.* 495, 527 (1948).

COMMENT: Harrah's finds the definition of undue economic concentration unduly restrictive in that "as written, the Commission would limit its review to only economic impacts among casino licensees." Rather, Harrah's maintains that the rules should consider "how economic dominance translates into influence and power," for example, dilution of the State's regulatory authority. Harrah's suggests that the definition of undue economic concentration be expanded to encompass domination of the casino market in Atlantic City so as to "adversely impact competition in the casino service industries" or "to otherwise provide any licensee undue power over the political and regulatory institutions that have jurisdiction over casino licensees." Similarly, Harrah's suggests that the criteria to be examined should include the following: (1) Whether the increase in concentration will adversely impact either casino service industries transacting business with the casino licensee seeking the expansion or other casino licensees' business dealings with casino service industries; and (2) Whether the increase in concentration will provide a casino licensee with undue dominance over any political institutions with jurisdiction over a casino licensee so as to undermine the public trust and confidence in the regulatory process."

RESPONSE: As the commenter points out, the Commission has on numerous occasions recognized the potential ramifications of undue market dominance for the casino industry and for the regulatory process. Nonetheless, such issues are collateral to these rules, which are by definition a measure of economic concentration. As directed by subsection 82e of the Act, the rules are intended to assess the degree of market concentration, thus preventing such "undue" level of concentration as to threaten undue influence and power. Moreover, the rules do not foreclose the consideration of any evidence that the Commission may deem relevant in particular instances, pursuant to paragraph 3.1(c)11.

COMMENT: Harrah's suggests that the financial stability of the operator is particularly important in the case of economic concentration because an economic failure by a dominant figure in the Atlantic City market is likely to have significant detrimental impact on the industry and the redevelopment of Atlantic City. Harrah's suggests that the criteria include "the current and projected financial stability of the casino industry and the casino licensee seeking the expansion as impacted by the proposed expansion plans."

RESPONSE: As the commenter itself expressly recognizes, financial stability is an independent statutory criterion for casino licensure that is otherwise examined by the Commission. See N.J.S.A. 5:12-84a; N.J.A.C. 19:43-4.

COMMENT: Harrah's notes "the very real possibility that two or more operators could formally or informally work in concert in a manner inconsistent with the policy against undue economic concentration," and suggests that a section be added to the proposed rules to address this issue.

RESPONSE: In the context of individual operators collaborating to dominate the market, State and Federal antitrust law would, of course, provide an appropriate remedy.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Commission are dictated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

19:43-3.1 Undue economic concentration

(a) In accordance with N.J.S.A. 5:12-82e, no casino license shall be issued to or held by a person if the Commission determines that such issuance or holding will result in undue economic concentration in Atlantic City casino operations by that person. Whether a person is considered the holder of a casino license is defined in N.J.S.A. 5:12-82e.

(b) For purposes of N.J.S.A. 5:12-82e and this section, "undue economic concentration" means that a person would have such actual or potential domination of the casino gaming market in Atlantic City as to substantially impede or suppress competition among casino licensees or adversely impact the economic stability of the casino industry in Atlantic City.

(c) In determining whether the issuance or holding of a casino license by a person will result in undue economic concentration, the Commission shall consider the following criteria:

1. The percentage share of the market presently controlled by the person in each of the following categories:

i. The total number of licensed casinos in this State;

ii. Total casino and casino simulcasting facility square footage;

[iii. Total square footage of the casino hotel and related facilities;]

*[iv.]***iii.*** Number of guest rooms;

*[v.]***iv.*** Number of slot machines;

*[vi.]***v.*** Number of table games;

*[vii.]***vi.*** Net revenue;

*[viii.]***vii.*** Table game win;

*[ix.]***viii.*** Slot machine win;

*[x.]***ix.*** Table game drop;

*[xi.]***x.*** Slot machine drop; and

*[xii.]***xi.*** Number of persons employed by the casino hotel;

2. The estimated increase in the market shares in the categories in (c)1 above if the person is issued or permitted to hold *[an additional]* ***the*** casino license;

3. The relative position of other persons who hold casino licenses, as evidenced by the market shares of each such person in the categories in (c)1 above;

4. The current and projected financial condition of the casino industry;

5. Current market conditions, including level of competition, consumer demand, market concentration, any consolidation trends in the industry and any other relevant characteristics of the market;

6. Whether the licensed casinos held or to be held by the person have separate organizational structures or other independent obligations;

7. The potential impact of licensure on the projected future growth and development of the casino industry and Atlantic City;

8. The barriers to entry into the casino industry, including the licensure requirements of the Act, and whether the issuance or holding of a casino license by the person will operate as a barrier to new companies and individuals desiring to enter the market;

9. Whether the issuance or holding of the license by the person will adversely impact on consumer interests, or whether such issuance or holding is likely to result in enhancing the quality and customer appeal of products and services offered by casino licensees in order to maintain or increase their respective market shares;

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10. Whether a restriction on the issuance or holding of an additional license by the person is necessary in order to encourage and preserve competition and to prevent undue economic concentration in casino operations; and

11. Any other evidence deemed relevant by the Commission.

(a)

CASINO CONTROL COMMISSION

Rules of the Games
Baccarat-Punto Banco; Red Dog; Minibaccarat
Payment and Collection of Wagers
Collecting or Marking Vigorish
Adopted Amendments: N.J.A.C. 19:47-3.10, 6.1, 6.5 and 7.10

Proposed: March 20, 1995 at 27 N.J.R. 1174(a).

Adopted: May 19, 1995, by the Casino Control Commission, Bradford S. Smith, Chairman.

Filed: May 23, 1995 as R.1995 d.309, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with the proposed amendments to N.J.A.C. 19:47-2.3 and 2.18 not adopted at this time.**

Authority: N.J.S.A. 5:12-63c, 69, 70f, 99a(16) and 100.

Effective Date: June 19, 1995.

Expiration Date: April 15, 1996.

Agency Note: As a result of public comments received in response to this proposal (summarized below), the New Jersey Casino Control Commission (Commission) determined at its public meeting of May 17, 1995, to take no action on the proposed amendments to N.J.A.C. 19:47-2.3 and 2.18 at the present time. The Commission may, however, consider adoption of those provisions at some future date.

Summary of Public Comments and Agency Responses:

Comments on the proposal were received from the Division of Gaming Enforcement (Division) and Sands Hotel & Casino (Sands).

COMMENT: The Division supports the adoption of the proposal.

RESPONSE: Accepted.

COMMENT: The proposal requires losing wagers to be collected before any action is taken to pay winning wagers or collect or mark vigorish. Sands objects to the proposed amendments because, in its view, "the order in which to collect losing wagers or to pay winning wagers should be left to the discretion of casino licensees." According to Sands, requiring losing wagers to be collected first is an "additional element of rigidity" that serves no regulatory interest and, conversely, increases a patron's opportunity to impermissibly supplement a wager, which Sands refers to as "past-posting."

RESPONSE: Accepted in part and rejected in part. In baccarat punto-banco and minibaccarat, the Commission has specifically provided a wide range of options from which a casino licensee may select in determining the sequence for paying winning wagers and collecting or marking vigorish. The option chosen by a particular licensee presumably evinces its belief as to the best deterrent for "past-posting," that is, the illegal practice of some patrons to attempt, while a dealer is engaged in settling another player's bet, to increase the amount of their winning wager by placing additional gaming chips on top of their stack of chips located in the designated area of the layout.

Under Sands proposal, at least insofar as baccarat punto-banco and minibaccarat are concerned, an unscrupulous patron with a losing wager would be afforded the opportunity to remove some or all of his or her wager while the dealer was servicing other players. In those circumstances, the Commission has a clear regulatory interest in ensuring that losing wagers are promptly and completely collected because those wagers represent unmistakable amounts on which the State is entitled to a gross revenue tax of eight percent. Certainly, there may be negative tax consequences when a patron "caps," "past-posts" or otherwise illegally increases the amount of a winning wager, but the Commission perceives that there is a greater tax risk in the dilatory collection of losing wagers at those two games.

The proposal also would establish a similar rule at red dog and at blackjack. In red dog, unlike most other authorized games, there is no need, once the outcome of a round of play is determined, to establish the sequence for collecting losing wagers and paying winning wagers because there are never winning and losing wagers on the table simultaneously. To that extent, Sands' comment has merit. Consequently, the Commission, without the need for further public notice or comment, is making that clear with the changes at adoption to N.J.A.C. 19:47-6.1 and 6.5, which will now also explicitly state the value order of the cards and identify when the player loses.

As for blackjack, the dealer immediately collects the losing wager of any player that busts. For the remaining players, other than those with blackjack, the existing regulations do not prohibit a dealer from paying or collecting the wagers of those players in turn by going from the dealer's right to left, whereas the proposed amendments would insist that the dealer first collect all losing wagers by skipping over any winning wagers and then returning to pay them. Given the comment from the Sands, the Commission has determined that the proposal's impact on the game of blackjack requires further study, and thus the Commission is not adopting the proposed amendments to N.J.A.C. 19:47-2.3(e) and 2.18(f), (h) and (i) at the present time.

Executive Order No. 27 Statement

An Executive Order No. 27(1994) analysis and certification are not required because the rulemaking requirements of the Commission for this adoption are dictated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

19:47-3.10 Announcement of result of round; payment and collection of wagers

(a) After each hand has received all the cards to which it is entitled pursuant to N.J.A.C. 19:47-3.7, 3.8 and 3.9, the dealer shall announce the final Point Count of each hand indicating which hand has won the round. If the two hands have equal Point Counts, the dealer shall announce "Tie Hand."

(b) After the result of the round is announced, the dealer or dealers responsible for the wagers on the table shall first collect each losing wager. Thereafter, the dealer or dealers shall, in accordance with one of the following procedures, pay each winning wager and collect or mark any vigorish or commission owed pursuant to N.J.A.C. 19:47-3.3.

1. Starting at the highest numbered player position at which a winning wager is located and proceeding in descending order to each next highest numbered player position, the dealer shall first pay each winning wager and then, returning to the highest numbered player position at which a winning wager was located and proceeding in like order, mark or collect the vigorish owed by each player.

2. Starting at the highest numbered player position at which a winning wager is located and proceeding in descending order to each next highest numbered player position, the dealer shall first mark or collect the vigorish owed by each player and then, returning to the highest numbered player position at which a winning wager is located and proceeding in like order, pay each winning wager.

3. Starting at the highest numbered player position at which a winning wager is located, the dealer shall pay that player's winning wager and immediately thereafter mark or collect the vigorish owed by that player and then, proceeding in descending order to the next highest numbered player position at which a winning wager is located, repeat this procedure until each winning wager is paid and the vigorish owed by each player is either marked or collected.

4. Starting at the highest numbered player position at which a winning wager is located, the dealer shall mark or collect the vigorish owed by that player and immediately thereafter pay that player's winning wager and then, proceeding in descending order to the next highest numbered player position at which a winning wager is located, repeat this procedure until the vigorish owed by each player is either marked or collected and each winning wager is paid.

(c) A casino licensee may, in its discretion, elect to use any of the procedures authorized in (b) above at any punto banco table in its establishment; provided, however, that:

1. The same procedure shall be used for all punto banco tables located within the same gaming pit; and

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2. The Commission and the casino licensee's surveillance department shall be notified, in writing, at least 30 minutes prior to the implementation of or a change in the particular procedure to be used at a table or gaming pit.

19:47-6.1 Cards; number of decks; value of cards; dealing shoe

(a) (No change.)

(b) The "value" ***(from lowest to highest)*** of the cards in each deck shall be as follows:

1. Any card from 2 to 10 shall have its face value;
2. Any jack shall have a value of 11;
3. Any queen shall have a value of 12;
4. Any king shall have a value of 13; and
5. Any ace shall have a value of 14.

(c) (No change.)

19:47-6.5 Procedures for each round of play; wagers; payouts

(a)-(h) (No change.)

(i) After all raise wagers have been made and prior to dealing the third card, the dealer shall announce "Raises closed." The dealer shall then draw a third card, place it face up on on the box between the initial two cards and announce the value of the third card. Thereafter, the dealer shall first collect all losing wagers *[and then]* ***or*** pay all winning wagers as follows:

1. The player shall win if the value of the third card dealt is between the *[value]* ***values*** of the initial two cards dealt*[(a third card which has the same value as the first or second card dealt is not deemed to be]* ***and shall lose if the value of the third card dealt is not*** between the values of the initial two cards*[)]* ***dealt***;

2.-3. (No change.)

(j)-(k) (No change.)

19:47-7.10 Announcement of result of round; payment and collection of wagers

(a) After each hand has received all the cards to which it is entitled pursuant to N.J.A.C. 19:47-7.7, 7.8 and 7.9, the dealer shall announce the final Point Count of each hand indicating which hand has won the round. If two hands have equal Point Counts, the dealer shall announce "Tie Hand".

(b) After the result of the round is announced, the dealer responsible for the wagers on the table shall first collect each losing wager. Thereafter, the dealer shall, in accordance with one of the following procedures, pay each winning wager and collect or mark any vigorish or commission owed pursuant to N.J.A.C. 19:47-7.3.

1. Starting at the highest numbered player position at which a winning wager is located and proceeding in descending order to each next highest numbered player position, the dealer shall first pay each winning wager and then, returning to the highest numbered player position at which a winning wager was located and proceeding in like order, mark or collect the vigorish owed by each player.

2. Starting at the highest numbered player position at which a winning wager is located and proceeding in descending order to each next highest numbered player position, the dealer shall first mark or collect the vigorish owed by each player and then, returning to the highest numbered player position at which a winning wager is located and proceeding in like order, pay each winning wager.

3. Starting at the highest numbered player position at which a winning wager is located, the dealer shall pay that player's winning wager and immediately thereafter mark or collect the vigorish owed by that player and then, proceeding in descending order to the next highest numbered player position at which a winning wager is located, repeat this procedure until each winning wager is paid and the vigorish owed by each player is either marked or collected.

4. Starting at the highest numbered player position at which a winning wager is located, the dealer shall mark or collect the vigorish owed by that player and immediately thereafter pay that player's winning wager and then, proceeding in descending order to the next highest numbered player position at which a winning wager is located, repeat this procedure until the vigorish owed by each player is either marked or collected and each winning wager is paid.

(c) A casino licensee may, in its discretion, elect to use any of the procedures authorized in (b) above at any minibaccarat table in its establishment; provided, however, that:

1. The same procedure shall be used for all minibaccarat tables located within the same gaming pit;

2. Any minibaccarat table located in a gaming pit that also contains a punto banco table shall use the same procedure that is to be used at the punto banco table pursuant to N.J.A.C. 19:47-3.10(c); and

3. The Commission and the casino licensee's surveillance department shall be notified, in writing, at least 30 minutes prior to the implementation of or a change in the particular procedure to be used at a table or gaming pit.

Recodify existing (c)-(d) as (d)-(e) (No change in text.)

(a)

CASINO CONTROL COMMISSION

Equal Employment and Business Opportunity Provisional Certificate of Women and Minority Businesses

Adopted Amendments: N.J.A.C. 19:53-1.1, 1.2, 1.4, 1.5, 2.2, 2.4, 5.3, 5.4, 5.5, 5.7, 5.9, 6.3, 6.5, 6.6 and 6.12

Proposed: April 3, 1995 at 27 N.J.R. 1373(a).

Adopted: May 19, 1995 by the Casino Control Commission, Bradford S. Smith, Chairman.

Filed: May 23, 1995 as R.1995 d.310, **without change**.

Authority: N.J.S.A. 5:12-63, 69, and 184 through 190.

Effective Date: June 19, 1995.

Expiration Date: December 15, 1995.

Summary of Public Comments and Agency Responses:
No comments were received.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Casino Control Commission are dictated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

19:53-1.1 Scope, policy and purpose

(a) (No change.)

(b) These rules are adopted in order to establish equal employment opportunity and equal business opportunity requirements for casino licensees and applicants, casino service industry enterprise licensees and applicants and construction contractors and subcontractors engaged in construction projects for casino licensees and applicants. These rules also establish affirmative action requirements for casino licensees and applicants, certain casino service industry enterprise licensees and applicants and construction contractors and subcontractors with regard to the employment of women and minorities. Finally, these rules establish affirmative action requirements for casino licensees with regard to the purchase of goods and services from certified minority and women business enterprises.

19:53-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

. . .

19:53-1.4 Designation of equal opportunity officer by casino licensee or applicant; responsibility of chief executive officer and equal opportunity officer

(a) Each casino licensee or applicant shall designate a principal member of its organization to serve as an equal opportunity officer. A casino license applicant shall designate its equal opportunity officer prior

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to the start of actual construction by the applicant or by any affiliated entity of any structure or facility to be used as an approved casino hotel, or prior to the recruitment and employment of personnel necessary to undertake the business of the hotel or casino, whichever first occurs. The chief executive officer shall be ultimately responsible for insuring that equal employment opportunity is afforded to all prospective and actual employees, that equal business opportunity is afforded to all persons, that affirmative efforts are made to recruit and employ women and minorities for positions in which the licensee or applicant is below the applicable employment goals, that the casino licensee makes affirmative efforts to achieve the applicable participation goals for business with certified MBEs and WBEs, that a policy advocating the employment and advancement of persons with disabilities is promulgated and enforced, and that the licensee or applicant achieves full implementation of its approved EEBOP. The equal opportunity officer shall be directly responsible for the organization and effective and continuing implementation of its approved EEBOP. The position of equal opportunity officer shall require a casino key employee license endorsed as such.

(b) (No change.)

(c) In addition to the responsibilities specified in (b) above, the equal opportunity officer shall have the responsibility to:

1.-2. (No change.)

3. Act as a liaison and to provide assistance to the Commission and the Division in the enforcement of the Act and this chapter, which responsibility shall include, without limitation, the obligation to prepare and submit such reports, documentation and statistical information as the Commission shall require concerning the activities of the licensee or applicant with certified MBEs and WBEs in contracting and purchasing; and

4. (No change.)

(d)-(f) (No change.)

19:53-1.5 Advisory boards

(a) The Commission may establish an advisory board consisting of local or State officials, representatives of area businesses and communities, women and minority organizations, union officials, disabled persons, casino industry representatives or other interested parties. Such advisory board may make recommendations to the Commission, upon its request, concerning policies or techniques to assure equal employment opportunity for all persons and the participation of certified MBEs and WBEs in purchasing and contracting in the casino industry and the casino-related construction industry.

(b) (No change.)

19:53-2.2 Obligation of casino licensee or applicant to monitor all construction activity

(a) (No change.)

(b) The monitoring system shall provide for systematic coordination between the equal opportunity officer, the relevant departments within the organization of the casino licensee or applicant which contract for construction work and the purchasing department. The monitoring system shall include, without limitation, procedures which:

1.-7. (No change.)

8. Ensure that certified MBEs and WBEs are afforded equal opportunity to compete in the bidding for construction contracts and subcontracts; and

9. Track the participation of certified MBEs and WBEs in construction projects.

19:53-2.4 Reporting obligations of casino licensees and applicants concerning the construction work force

(a) Unless otherwise specified in the construction section of an approved EEBOP pursuant to N.J.A.C. 19:53-6, each casino licensee or applicant shall be required to file each of the following monthly reports or submissions regarding its construction work force with the Commission and Division:

1. (No change.)

2. A Project Status Report, which shall describe all construction projects involving contractors or subcontractors which have started or are scheduled to start prior to the filing of the next Project Status Report and shall include: the name and project number for each project; a listing of all contractors and subcontractors working or scheduled to work on each project; the name of any certified MBE or WBE working or scheduled to work on each project, and the scheduled or actual start date and anticipated finish date of construction. The Project Status Report shall be submitted in a format prescribed by the Commission and shall be filed in accordance with a schedule proposed by the casino licensee or applicant and approved by the Commission.

3. (No change.)

(b) Unless otherwise specified in the construction section of an approved EEBOP pursuant to N.J.A.C. 19:53-6, each casino licensee or applicant shall file an Annual Summary of Construction Activity with the Commission and Division at least four months prior to the scheduled date of the EEBOP assessment hearing, initial casino license hearing or casino license renewal hearing. The Annual Summary of Construction Activity shall include a summary of all construction projects started by the casino licensee or applicant during the four calendar quarters immediately preceding the filing deadline for the Annual Summary of Construction Activity. The summary shall, without limitation, describe:

1.-3. (No change.)

4. The total dollar amount of construction expenditures made with certified MBE or WBE construction firms.

19:53-5.3 Participation goals for casino licensee purchases of goods and services from minority and women businesses

(a) Beginning on the date of receipt of its casino license, every casino licensee shall make a good faith effort to spend each year at least five percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-5.5, with certified MBEs and WBEs.

(b) Effective January 1, 1991, or three years after the receipt of its casino license, whichever is later, every casino licensee shall make a good faith effort to spend each year at least 10 percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-5.5, with certified MBEs and WBEs.

(c) Effective January 1, 1994, or six years after the receipt of its casino license, whichever is later, every casino licensee shall make a good faith effort to spend each year at least 15 percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-5.5, with certified MBEs and WBEs.

(d) Every casino licensee shall make a good faith effort, considering the availability of both groups, to distribute the dollar value of its contracts for goods and services equitably between certified MBEs and certified WBEs.

19:53-5.4 Commission directory of certified minority and women business enterprises; removal from directory; obligation to obtain registration or license

(a) Any enterprise that is currently certified by the Department of Commerce and Economic Development as an MBE or WBE shall be listed in the Commission's directory of certified MBEs and WBEs (Commission MBE/WBE Directory). Any enterprise that has its MBE or WBE certification revoked by DCED or that fails to maintain its DCED certification shall be removed immediately from the Commission MBE/WBE Directory. The Commission shall provide assistance to MBEs and WBEs in applying for certification by the DCED.

(b) If it is determined by the Commission or the DCED, upon the denial of certification by the DCED, or at any time before or after such decision, that an enterprise has intentionally misrepresented material facts in its application for DCED certification, the Commission, after an appropriate hearing pursuant to N.J.A.C. 19:42, shall remove the enterprise from the Commission MBE/WBE directory. In addition, the Commission may prohibit any such enterprise from transacting further business with any casino licensee or applicant for a period of five years. Such prohibition may be applied to all owners, principals, officers and employees of the enterprise.

(c) Certification of an enterprise as an MBE or WBE does not in any way relieve that enterprise or any casino licensee of its obligation to comply with any requirement of the Act or the Commission's rules concerning registration or licensure of enterprises doing business with casino licensees.

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19:53-5.5 Determination of casino licensee net disbursements for goods and services and disbursements to MBEs and WBEs

(a) In determining the net disbursements for goods and services made by a casino licensee during any period and the percentage thereof made with certified MBEs and WBEs, a casino licensee shall first record the amount of its gross disbursements during the period, including bus business, and then determine its adjusted gross disbursements by deducting its allowable administrative costs and allowable direct labor costs for the period.

(b)-(d) (No change.)

(e) A casino licensee may fulfill up to 70 percent of the MBE and WBE participation goals established by N.J.A.C. 19:53-5.3, or any part thereof, by requiring contractors to award portions of their contracts to certified MBEs and WBEs, to the extent that dollars are actually spent with certified MBEs and WBEs. In determining the good faith efforts of a casino licensee to meet its MBE and WBE participation goals, no consideration shall be given to dollars spent by casino contractors with certified MBEs and WBEs in excess of this 70 percent limitation. Any casino licensee seeking credit for subcontracts awarded to certified MBEs or WBEs by a casino contractor shall provide proof of the amount of the disbursements to the Commission. Such proof shall include:

1. (No change.)

2. Copies of any payment orders and checks made payable to the certified MBE or WBE subcontractor or copies of computer generated records which indicate that such payments were made; and

3. (No change.)

(f) The percentage of disbursements awarded to certified MBEs and WBEs by a casino licensee during any period shall be determined by dividing the total amount of such disbursements made during the period by the casino licensee and by any contractor pursuant to an agreement authorized under (e) above, by the net disbursements of the casino licensee for the period as determined in (a) and (d) above.

(g) When recording or reporting the dollar value of its disbursements for goods or services with MBEs and WBEs, a casino licensee shall record or report a disbursement with an enterprise that has been certified as both an MBE and WBE only once. If a casino licensee has an agreement with a contractor in which the contractor agrees to award a portion of its contract to certified MBEs or WBEs pursuant to (e) above and the contractor itself is a certified MBE or WBE, a casino licensee shall not claim credit for any disbursement to the certified MBE or WBE subcontractor if a corresponding credit is claimed for the casino contract.

19:53-5.7 Quarterly casino licensee disbursement reports

(a) Each casino licensee shall submit to the Commission and the Division, in a format prescribed by the Commission, a quarterly report on its purchases of goods and services, including bus business, which shall consist of the following information recorded in accordance with the requirements of N.J.A.C. 19:53-5.5:

1.-5. (No change.)

6. The name and vendor identification number of each certified MBE or WBE with whom the casino licensee did business during the quarter, as well as:

i.-ii. (No change.)

iii. The total amount of dollars, if any, which were disbursed to the certified MBE or WBE by a contractor pursuant to an agreement as described in N.J.A.C. 19:53-5.5(e);

7. The total dollar amount of disbursements made to certified MBEs and WBEs during the quarter by either the casino licensee or its contractors, listed by MBEs, WBEs and combined total, and the percentage of the net disbursements reported pursuant to (a)5 above that each listed amount represents; and

8. The total dollar amount of disbursements made during the quarter to certified MBEs and WBEs by contractors pursuant to agreements as described in N.J.A.C. 19:53-5.5(e).

(b) (No change.)

19:53-5.9 Required reporting adjustments for enterprises removed from the Commission MBE/WBE Directory

(a) A casino licensee shall be required to report separately in the MBE or WBE disbursement sections of its current quarterly disbursement report, required pursuant to N.J.A.C. 19:53-5.7, or its current annual disbursement report, required pursuant to N.J.A.C. 19:53-5.8, any disbursement made to a certified MBE or WBE which is removed from the Commission MBE/WBE Directory prior to the submission of the report to the Commission and the Division.

(b) In determining the good faith efforts of a casino licensee to implement and comply with the provisions of its approved EEBOP pursuant to N.J.A.C. 19:53-6.8, a casino licensee may receive credit for any disbursement made to an MBE or WBE which was certified at the time of the disbursement even if such enterprise is subsequently removed from the Commission MBE/WBE Directory unless the casino licensee knew or should have known at the time of the disbursement that the MBE or WBE did not qualify for certification.

(c) Any disbursement to an MBE or WBE which is removed from the Commission MBE/WBE Directory during the current reporting period shall not be included in any report prepared by the Commission or any casino licensee concerning actual disbursements made to certified MBEs and WBEs.

19:53-6.3 Construction section of an EEBOP

(a) (No change.)

(b) If a casino licensee or applicant has failed to achieve the contractor and subcontractor employment goals for women and minorities established pursuant to N.J.A.C. 19:53-2.3, topics appropriate for inclusion in the construction section of an EEBOP may also include, without limitation, the following:

1. Innovative strategies for increasing the participation of women and minorities in the construction work force and the utilization of certified MBEs and WBEs as contractors and subcontractors, assuming that forecasted capital expenditures remain level; and

2. (No change.)

19:53-6.5 Business section of an EEBOP

(a) (No change.)

(b) If a casino licensee has failed to achieve the participation goals for goods and services to be purchased from certified minority and women businesses established pursuant to N.J.A.C. 19:53-5.3, topics appropriate for inclusion in the business section of an EEBOP may also include, without limitation, the following:

1. An analysis of the goods and services which are anticipated to be purchased by the casino licensee and the types of goods and services which might be purchased from certified MBEs and WBEs based on availability.

2. Strategies and initiatives to be undertaken by the casino licensee to assist certified MBEs and WBEs to compete, survive and grow in casino contracting and purchasing, which may include, without limitation, any efforts by the casino licensee to:

i.-iv. (No change.)

3. (No change.)

4. The means by which the casino licensee will provide notice to certified MBEs and WBEs of its intent to purchase goods or services;

5. Procedures which the casino licensee will use to document its good faith efforts to utilize the services of certified MBEs and WBEs, such as documentation of affirmative efforts by the licensee to:

i. Increase financial assistance to certified MBEs and WBEs through the use of low-cost loans;

ii. Develop special payment terms for certified MBEs and WBEs;

iii. (No change.)

iv. Encourage joint ventures between certified MBEs and WBEs and majority-owned businesses or joint ventures with other certified MBEs and WBEs;

v. (No change.)

vi. Develop incentives for majority contractors to subcontract to certified MBEs and WBEs, and to retain and sustain certified MBEs and WBEs vendors through encouragement and development activities; and

6. Programs, consistent with N.J.A.C. 19:53-5.5, which require contractors to subcontract a portion of their contracts to certified MBEs and WBEs.

19:53-6.6 Atlantic City small businesses

(a)-(b) (No change.)

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(c) Any enterprise which meets the requirements in (a) above may be certified by the Commission as an Atlantic City small business if it files an application and affidavit with the Commission, in a form provided by the Commission, attesting that it is a bona fide Atlantic City small business. The affidavit shall be accompanied by a written acknowledgement of the penalties which may be imposed on the enterprise and the persons associated therewith if the enterprise makes any material misrepresentation of fact in its affidavit or application for certification. Any enterprise which misrepresents its status as an Atlantic City small business shall be subject to the same penalties set forth in N.J.A.C. 19:53-5.4 (b).

(d) The Commission shall maintain a section in its directory of certified MBEs and WBEs which lists all certified Atlantic City small businesses. An enterprise may be certified as both an MBE or WBE and an Atlantic City small business.

19:53-6.12 Waiver of reporting requirements for casino licensees

(a)-(b) (No change.)

(c) If a casino licensee meets the applicable goals specified in N.J.A.C. 19:53-5.3 for goods and services purchased from certified MBEs and WBEs for four consecutive quarters, the quarterly disbursement report required by N.J.A.C. 19:53-5.7 shall be waived.

(d) (No change.)

(a)

EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Executive Commission on Ethical Standards Rules Attendance at an Event Sponsored by an Interested Party

Adopted Amendment: N.J.A.C. 19:61-6.4

Proposed: April 3, 1995 at 27 N.J.R. 1376(a).

Adopted: May 25, 1995 by the Executive Commission on Ethical Standards, Rita L. Strmensky, Executive Director.

Filed: May 26, 1995 as R.1995 d.329, **without change.**

Authority: N.J.S.A. 52:13D-12 et seq.

Effective Date: June 19, 1995.

Expiration Date: March 2, 1997.

Summary of Public Comments and Agency Responses:

The Executive Commission on Ethical Standards received three comments, from the Department of Agriculture, the Department of Law and Public Safety and the University of Medicine and Dentistry.

COMMENT: One commenter felt that the requirement that approvals be forwarded to the Executive Commission for review would create additional paperwork and duplicate agency review.

RESPONSE: In requiring that approvals be forwarded to the Commission for review, the Commission was accepting a suggestion by a commenter on the originally proposed rule. That commenter had urged the speaker exception be adopted and that such an exception could be controlled so that no abuse resulted if any exceptions granted were reported to the Commission.

COMMENT: One commenter felt That the proviso that the speaker exception would not apply if an actual conflict or the appearance of a conflict arises negated the speaker exception; the commenter asked for clarification.

RESPONSE: The Commission included the qualifying language in the proposal so that State agencies, in reviewing requests for approval, will review all circumstances and not uniformly approve speaker or panel participant situations. There are circumstances that would suggest a conflict or appearance of a conflict where approval should not be granted. For example, when an interested party has a matter pending before a State agency and the agency's decision maker is invited to speak at an expensive dinner sponsored by that party, a conflict or an appearance of a conflict arises. If a vendor with a bid pending invites the agency's evaluator to participate in a seminar, a conflict or an appearance of a conflict arises. In such situations, approval for the State official to accept a direct or indirect benefit should not be granted.

COMMENT: One commenter said that the proposal and the regulations adopted in February 1995 make the efforts of the agency to develop public/private partnerships more difficult. The commenter also noted that the proposal does not take into account the long-standing practice in academic institutions that permits faculty to accept honoraria for speeches, commissioned papers and occasional lectures.

RESPONSE: Regulations adopted in 1995 and the proposed amendment do not impose any new standards; they merely apply the provisions of the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., to specific circumstances.

The Commission does not believe that these rules have an effect on developing public/private partnerships. The Commission's Joint Venture Guidelines accommodate many of these partnerships and at the same time preserve the public trust. In addition, those partnerships can be developed independently of situations where State officials could be placed in positions of accepting things of value from interested parties. Nor do the rules prevent attendance at events where a legitimate State purpose is served. The rules function to protect State officials from situations where their objectivity and independence of judgment in the course of their official duties could be seen to be compromised because of their acceptance of benefits from interested parties. In such cases, the State agency can pay the appropriate expenses, and no conflict or appearance of a conflict arises.

With respect to the commenter's feelings about honoraria, the Commission believes that the rule adopted earlier this year merely reflects the provisions of N.J.S.A. 52:13D-24, a standard that has been in effect since 1972.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the adopted amendment implements the Executive Commission's interpretation of N.J.S.A. 52:13D-12 et seq., particularly N.J.S.A. 52:13D-24, and is not subject to any Federal requirements or standards.

Full text of the adoption follows:

19:61-6.4 Attendance at an event sponsored by an interested party

(a) The State official shall secure the prior approval of the department head to attend such an event.

(b) Except as provided in (c) below:

1. The State shall pay the reasonable expenses of the State official associated with attending the event.

2. Neither the State official nor the State shall receive any direct or indirect benefit from any other source.

(c) The requirement and prohibition in (b) above need not apply if the event is designed to provide training, dissemination of information, or the exchange of ideas and the State official is making a speech, is participating in a panel at the event or is an accompanying resource person for the speaker and/or participant subject to the reasonable approval of the department head. The direct or indirect benefit provided to the State official by the sponsor of the event must be identical to the benefits provided to other speakers or panel participants. If an actual conflict or the appearance of conflict could arise under the application of this subsection, (b) above shall govern. Approvals granted under this exception must be forwarded to the Commission for review.

(d) The State official may pay his or her own expenses with his or her personal funds.

(e) The State official shall not accept an honorarium or fee for a speech or presentation at an event covered by this section.

Examples

An employee of the Department of Environmental Protection has been invited to attend a conference of the Association of Environmental Authorities and has been asked to present a short program to explain a new series of forms being proposed by the Department. The Association has offered to waive the $200.00 conference fee; the conference program includes morning and afternoon refreshments and lunch. If the Department head approves the employee's attendance and participation in the conference, the employee may accept the waiver of the fee and the refreshments and meal included in the program. A copy of the Department head's approval must be forwarded to the Commission.

The Division of Motor Vehicles is considering the purchase of new pollution testing equipment. One of the companies that plans to submit a bid invites several Division employees to a demonstration of the equipment to be held at a hotel conference center. A seafood buffet will be served after the demonstration. With proper approval, the employees may attend the demonstration, but because the company plans to submit a

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bid to provide this equipment and is therefore an interested party with respect to the Division, the employees may not partake of the seafood buffet at the expense of the vendor. The employees may, however, pay the cost of the buffet personally.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration

Recoveries Involving County Welfare Agencies

Adopted Amendment: N.J.A.C. 10:49-14.4

Proposed: August 15, 1994 at 26 N.J.R. 3348(a).
Adopted: January 26, 1995, by William Waldman, Commissioner, Department of Human Services.
Filed: January 26, 1995 as R.1995 d.105, **without change**.
Authority: N.J.S.A. 30:4D-7, 7a, b, c, i and r.
Effective Date: June 19, 1995.
Expiration Date: August 17, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

There is a provision in Federal law which allows states to impose liens or recoveries upon Medicaid recipients for benefits incorrectly paid. Reference is made to Section 1917(a)(1) of the Social Security Act, 42 U.S.C. 1396p.

However, there is no provision in Federal law for situations where a state, like New Jersey, has chosen to share its portion of the recovery with other political subdivisions, such as counties.

Therefore, there is no need for the analysis required by Executive Order No. 27 because there really is no standard that the State could exceed.

Full text of the adoption follows:

10:49-14.4 Recoveries involving county welfare agencies

(a) (No change.)

(b) The following pertain to incorrectly granted assistance (cash and/or medical assistance):

1.-3. (No change.)

4. When collection occurs in a case involving both cash assistance and medical assistance, the CWA shall, in the absence of court instruction to the contrary, apply the proceeds to the repayment of cash assistance and the reimbursement of DMAHS for medical assistance. The reimbursement to DMAHS shall be payable to the Treasurer, State of New Jersey, which shall then reimburse the CWA in the amount of 25 percent of the gross recovery on a periodic basis to be determined by DMAHS.

5. When in any case a CWA recovers only for medical assistance improperly granted, the CWA shall remit the proceeds to DMAHS. The reimbursement to DMAHS shall be payable to the Treasurer, State of New Jersey, who will then reimburse the CWA in the amount of 25 percent of the gross recovery on a periodic basis to be determined by DMAHS.

6. When any CWA action, whether alone or in combination with DMAHS, results in a recovery of improperly granted medical assistance from a case generated by the Internal Revenue Service (IRS) unearned income component of the IEVS match, all funds recovered shall be remitted to DMAHS payable to the Treasurer, State of New Jersey, which shall then reimburse the CWA in the amount of 25 percent of the gross recovery on a periodic basis to be determined by DMAHS.

(c)-(g) (No change.)

(h) This section shall apply to all pending and future recovery cases, except that:

1. The 25 percent incentive payments provided for in (b)4 and 5 above shall apply to all non-IEVS incorrect payment recoveries received by the CWA on or after July 1, 1993.

2. Paragraph (b)6 above applies to all IEVS-related recoveries received on or after July 1, 1989 by either DMAHS or the CWA, whichever agency is handling the recovery.

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Managed Health Care Services

Adopted New Rules: N.J.A.C. 10:74

Adopted Repeal: N.J.A.C. 10:49-19

Proposed: March 6, 1995 at 27 N.J.R. 853(a).
Adopted: May 26, 1995 by William Waldman, Commissioner, Department of Human Services.
Filed: May 26, 1995 as R.1995 d.337, **with substantive and technical changes** not requiring additional notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A 30:4D-2 and 7.
Effective Date: June 19, 1995.
Expiration Date: June 19, 2000.

The following is a list of those who have submitted comments:

1. New Jersey Association of Mental Health Agencies, Inc., Manasquan, N.J., Leonard S. Altamura, DSW, Executive
2. Medical Society of New Jersey, Lawrenceville, N.J., Fred M. Palace, MD, President
3. New Jersey Primary Care Association, Inc., Princeton, N.J., Katherine Grant-Davis, M.B.A., Executive Director
4. Pamela Ford, RN, MSN, Lawrenceville, N.J.
5. New Jersey Association of Health Care Facilities, Trenton, N.J., William R. Abrams, Vice President
6. Felician College, Lodi, N.J., Rona F. Levin, Ph.D., R.N., Director, Division of Health Sciences
7. Garden State Pharmacy Owners, Inc., Rochelle Park, N.J., Phyllis Salvato Cole, Director of Government Affairs
8. Karen B. Giquinto, MSN, RN, CS, Trenton, N.J. 08619
9. Burton W. Brenman, Inc., Dover, N.J., Burton W. Brenman, President
10. Mercer Medical Center, Division of Reproductive Endocrinology, Trenton, N.J., Katharine E. Donaldson, RN, NP, C, MSN
11. New Jersey State Nurses Association, Trenton, N.J., Andrea W. Aughenbaugh, MSN, RN, CS, Deputy Director
12. New Jersey Family Planning League, Inc., Newark, N.J., Joseph L. Alifante, Executive Director
13. New Jersey Optometric Association, Trenton, N.J., David F. Grimm, NJOA Executive Director
14. New Jersey Psychological Association, Livingston, N.J., James S Wulach, PhD, JD, President and Ronald Silikovita, PhD, Chair, Children, Youth and Families Committee
15. New Jersey Hospital Association, Princeton, N.J., Gary S. Carter, FACHE, President and CEO
16. Legal Services of NJ, Inc., Edison, NJ, Melville D. Miller, Jr., and Leighton A Holness.
17. Plainfield Neighborhood Health Services Corporation, Plainfield, NJ, Julane W. Miller, ACSW, Executive Director
18. Family Planning Association of NJ, Trenton, N.J., Anita Leone, Executive Director
19. Department of Human Services, Division of Youth and Family Services, Trenton, NJ, Kathryn Zurheide, Bureau of Revenue Development, CN922
20. Association for Children of New Jersey, Newark, NJ, Ciro Scalera
21. University of Medicine and Dentistry of New Jersey, Robert Wood Johnson Medical School, New Brunswick, NJ, Robert C. Like, Associate Professor
22. Visiting Nurse Association of Central Jersey Health Group, Red Bank, NJ, Mary Ann Christopher, MSN, RN.CS, FAAN, Vice President

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23. Bacharach Rehabilitation Hospital, Pomona, NJ, Richard Kathrins, Administrator

24. Kessler Institute for Rehabilitation, Inc., West Orange and Saddle Brook, NJ, Deborah Sie, Director of Planning

25. University of Medicine & Dentistry of New Jersey, Newark, NJ, Stanley S. Berben, Jr., M.D., President UMDNJ; Paul F. Larson, M.D., Senior Vice President, Academic Affairs UMDNJ; Gary Lamson, Vice President and Chief Executive Officer UMDNJ University Mental Health Services; Frances W. Quinless, Ph.D., R.N. Dean and Professor, UMDNJ-School of Nursing; David M. Gibson, Ed.D., Dean, UMDNJ-School of Health Related Professions

26. American College of Emergency Physicians, New Jersey Chapter, Princeton Junction, NJ, Robert Potts, MD

27. Kristine M. Olson, M.S., R.N., N.P.C., Lambertville, NJ

28. Public Strategies/Impact, L.L.C., Trenton, New Jersey, Tracie De Sarno

29. Brookdale Community College, Lincroft, New Jersey, Peter F. Burnham, Ph.D., President; Johanna H. Kobran, Ed. D., Vice President for Educational Services; Maris A. Lown, M.S., Director, Health Sciences

Summary of Public Comments and Agency Responses:

General Comments and Comments on the Social and Economic Impact statements follow:

The commenters to this section are: the New Jersey Primary Care Association, Inc. (NJPCA);the New Jersey American College of Emergency Physicians (NJACEP); Burton W. Brenman, Inc.; the Plainfield Neighborhood Health Services Corp. (PNHSC); the Association for Children of New Jersey (ACNJ); the New Jersey Optometric Association (NJOA); Dr. Like of the University of Medicine and Dentistry of New Jersey; Legal Services of New Jersey (LSNJ); Garden State Pharmacy Owners (GSPO), the New Jersey Hospital Association (NJHA).

1. COMMENT: The New Jersey Primary Care Association (NJPCA) commented that the rules make no mention of provider ratio, but recognized that the 1915(b)(1) waiver request, which NJPCA has reviewed, stated that the number of full-time equivalent (FTE) primary care physicians PCPs) is one to 1500 Medicaid enrollees. The NJPCA suggested that the ratio should be one to 2500.

RESPONSE: The provider ratios are addressed as part of the HMO contract and, as noted by the NJPCA, are also addressed in the waiver request. This ratio is consistent with the ratios approved by the Federal government in other states' waivers. The Department believes that the current ratio is appropriate to provide quality health care to the Medicaid population enrolled in HMOs.

2. COMMENT: The NJPCA expressed concern with the adequacy of the HMOs' provider network prior to beginning mandatory enrollment in a particular county. The NJPCA also questioned who decides what is "adequate" and what standards are used to determine adequacy.

RESPONSE: The provider network standards are defined in the contract between the HMO and the Department and have been approved by HCFA. The Department conducts a strenuous review of the provider networks which includes review of HMO provider contracts, the HMO credentialing process, geographical access mapping and use of other review standards to determine the adequate presence of a network prior to implementation. Additionally, the Department of Health reviews HMO networks prior to issuance of a Certificate of Authority which enables the HMO to be operative in the State of New Jersey. The Department is confident that the provider network standards and review process established are adequate and appropriate.

3. COMMENT: The NJPCA commented on the delivery of culturally competent care. The NJPCA felt that the rules should address this issue in greater detail.

RESPONSE: The Department believes that the definition of cultural competence adequately describes the term. The Department is adding the definition of bilingual to the rules. This definition will read: "Bilingual" means, at a minimum, English and Spanish plus any other language which is spoken by 10 percent or more of the enrolled Medicaid population in the contractor's plan.

HMOs are required by contract to prepare bilingual marketing and educational materials and meet a number of other requirements in order to be "culturally competent". The standard of 10 percent is regularly used in health, education an public assistance programs.

4. COMMENT: The New Jersey American College of Emergency Physiscians (NJACEP) strongly supported patient education regarding the recognition of conditions warranting emergency medical evaluation.

RESPONSE: HMOs who contract with the State to provide services to Medicaid clients must, by contract, educate patients with regard to urgent and emergency care. The Department reviews all education/marketing materials prepared by the HMO.

It should be noted that the State has contracted with a Health Benefit Coordinator to act as a client advocate in providing client education and enrollment.

5. COMMENT: Mr. Brenman suggested that the rules should state how subcontractors will provide services to the HMOs. He also suggested that it should be required that all subcontractors be New Jersey businesses.

RESPONSE: The definition of subcontractor in N.J.A.C. 10:74-1.3 clearly states that the subcontractor "is subject to the same terms, rights and duties as the contractor". The Department is not requiring that all subcontractors be New Jersey businesses. The Department contracts with HMOs to meet certain standards. Any subcontracting is between the HMO and the subcontractor, providing that the appropriate standards are met.

6. COMMENT: The Plainfield Neighborhood Health Services Corporation (PNHSC) commented that New Jersey's 1915(b)(1) waiver application to the Federal Government specifies that cost savings resulting from the use of more cost effective medical care will be shared with recipients by providing them with additional services. PNHSC asked how this will be accomplished.

RESPONSE: New Jersey's waiver application defines how cost-savings will be shared with Medicaid beneficiaries. Medicaid beneficiaries enrolled in various HMOs under the waiver will receive additional services not covered under the State Plan. Benefits, including coordinated care and case management, are provided by each participating HMO. Health education and counseling are required to be provided by each of the HMOs and are an integral part of case management and preventive health care.

7. COMMENT: Comments from the Association for Children of New Jersey (ACNJ) focused on families making informed decisions and being provided with accurate information. The ACNJ was concerned that the Health Benefits Coordinator (HBC) was not yet in place.

RESPONSE: The HBC is in place as a contracted agent of the State whose responsibilities include client outreach, education and enrollment into managed care. In the first three mandatory counties, the HBC is currently accepting enrollments from the participating HMOs and making contact with clients to verify the understanding of their action to enroll. Upon implementation of mandatory managed care, the HBC will perform such functions as: actively outreaching the client to advise them of HMOs available to them, discussing the physician panels of available HMOs, answering client questions regarding the use of managed care and directly accepting and processing enrollments from the client. The Department is committed to having Medicaid beneficiaries make well-informed decisions to achieve a successful managed care program. The Department believes that the role of the HBC is an integral one in this process and will ensure that Medicaid beneficiaries are well-informed.

8. COMMENT: The ACNJ was concerned about ensuring continuity of care and appropriate referral mechanisms for special needs children who may be considered excluded or exempt.

RESPONSE: Any Medicaid beneficiary who is excluded or exempted from the mandatory managed care program will continue to receive their Medicaid services in the fee-for-service environment. These individuals will remain in the fee-for-service program (in keeping with existing rules) with their current providers and will have no referral mechanisms in place.

If a family enrolls in an HMO with a child with special needs, the HMO has the responsibility to assess these needs and provide appropriate services.

9. COMMENT: The New Jersey Optometric Association (NJOA) asked a number of questions related to establishment of the HMO and the participating provider network and how language requiring "assurances" that the provider network used for private, commercial business be equally available to Medicaid enrollees will be enforced.

RESPONSE: The Department contracts with HMOs which have received a certificate of authority (COA) to operate in New Jersey from the Departments of Health and Insurance. The HMOs must include in their networks appropriate providers to cover all of the services in the benefits package.

The HMO providers must meet the same accreditation and credentialing standards in an HMO in which they participate whether they serve Medicaid or commercial enrollees. Additionally, the Federal government requires that no more than 75 percent of the HMO enrollee composition can be Medicaid/ Medicare participants without a federally approved waiver.

10. COMMENT: Dr. Like proposed creation of an ongoing Policy Advisory Council to be responsible for monitoring the implementation of New Jersey Care 2000.

RESPONSE: The Department seeks input formally and regularly from interested parties regarding the implementation of New Jersey Care 2000. This

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input comes from community agencies, Medicaid beneficiaries, the provider community, other Departments/Divisions in State government, etc. The Department is confident that the steps it has taken to seek input will help to create a successful managed care program.

11. COMMENT: Legal Services of New Jersey (LSNJ) suggested the rules should establish the Medicaid Managed Care Task Force to oversee the implementation of managed care in New Jersey.

RESPONSE: The Medicaid Managed Care Task Force will continue to play an integral role in the managed care activities of the Department. Additionally, the Department established an advisory group which will review ongoing operations in the managed care area as they relate to quality management. This is also in line with the settlement in *Pelletier v. Waldman*.

12. COMMENT: LSNJ is concerned that the rules do not contain the substantive rights conferred by contract.

RESPONSE: Where appropriate, contract language has been used. The Department believes, as LSNJ suggests, that the proposed rules adequately and implicitly adopt those contract terms which affect the substantive rights of Medicaid beneficiaries under the contracts between the Department and the HMOs.

13. COMMENT: The Garden State Pharmacy Owners (GSPO) were concerned with the potential impact of the proposed rules on specific issues related to reimbursement and coverage of pharmacy services for the AFDC and AFDC-related client population. The GSPO was concerned with the potential reimbursement limits associated with an all-inclusive capitation model, which may not be related to a free-standing model of reimbursement established strictly for pharmacy services.

RESPONSE: In the managed care program which the State has designed, the Department contracts with the HMO to provide a certain package of services, including pharmacy services. The HMO is capitated for the provision of these services. The capitation rates are actuarially calculated and include actual paid claims experience for pharmacy benefits. The reimbursement rate established for individual providers is contingent upon the negotiation between the pharmacy provider and the HMO. Negotiation options are not limited to a single HMO, since several plans will be operating in each of the mandatory counties.

14. COMMENT: The GSPO also expressed concern about the potential for transfer of risk related to capitated reimbursement which is not found in a fee-for-service model of reimbursement.

RESPONSE: The extent to which risk is transferred to a provider is contingent upon contract negotiations between the provider and the HMO.

15. COMMENT: The GSPO suggested that there was a risk of increased related medical costs to the Medicaid program, possibly due to access limitations for the AFDC and AFDC-related client population imposed by restricted pharmacy networks established by approved Managed Care Organizations/HMOs.

RESPONSE: See the response to Comment 2 above to review the steps that the Department takes to insure the adequacy of provider networks for all services covered by the HMO contract. This review will insure that clients have sufficient access to pharmacy services. Additionally, it should be noted that although some HMOs require a client to select a pharmacy as they do a primary care provider, this is not the case with all plans. Several HMOs do not use restricted pharmacy networks, in which case pharmacy utilization is only a function of the prescribing provider and geographic access to a pharmacy provider.

16. COMMENT: The New Jersey Hospital Association (NJHA) commented that the statute authorizing the Statewide managed care program for Medicaid recipients states that the Commissioner of Human Services shall prepare a five-year plan (N.J.S.A. 30:4D-7C). (sic) NJHA believes that this implies that the program will be phased in gradually. Further, NJHA states that the Commissioner at no time reached out to the NJHA to solicit their input on "terms and conditions for enrolling Medicaid recipients . . . the health care services that will be offered, and an estimate of the per capita cost for enrollment."

RESPONSE: The Department is indeed phasing in managed care for Medicaid beneficiaries. First, the Department has initiated and expanded managed care on a voluntary basis. Additional expansion will occur when the Department phases in managed care by enrolling Medicaid eligibles in the first tier counties (Camden, Gloucester, Essex and Hudson), with later phasing in of other counties.

The Department disagrees with the comment that N.J.S.A. 30:4D-7c alone authorizes a managed care program. (See N.J.S.A. 30:4D-2 and 7, which are the authorizing statutes cited in the proposal.) The commenter's references are presumably to the Health Care Cost Reduction Act of 1991, P.L. 1991, c.187, frequently referenced as "Chapter 187." Chapter 187 was enacted as part of the since repealed "Chapter 83" (P.L. 1978, c.83) "all payer" statewide hospital rate setting system in which Medicaid participated. Several sections of Chapter 187 reflect the legislative intent for Medicaid to implement managed care, which was a difficult undertaking in the then existing highly regulated hospital environment. Sections 42 and 43 of Chapter 187, codified at N.J.S.A. 30:4D-7b and 7c, directed Medicaid to develop a plan for a statewide network of managed care providers and also required certain types of HMOs to submit plans to DMAHS to enroll Medicaid recipients. Since then, there have been significant changes in health care in New Jersey including the repeal of hospital rate regulation. However, insofar as the NJHA reads the statute to require the Commissioner to solicit input from the NJHA on the "terms and conditions for enrolling Medicaid recipients, including the number of recipients that can reasonably be enrolled, the health care services that will be offered, and an estimate of the per capita cost for enrollment of these persons," N.J.S.A. 30:4D-7c contains no such requirement. By its express terms, the statute provides for the Commissioner to obtain such information from HMOs themselves and does not delineate a role for the NJHA in the submission of those plans.

17. COMMENT: The NJHA stated that at no time has the Commissioner of Human Services reached out to NJHA to solicit its input on the managed care program.

RESPONSE: The Department has offered at least two formal opportunities for interested parties to comment and offer input in the development of the managed care program.

On June 6, 1994, the Department held a Public Hearing in three locations in the State (north, south, central) on the 1915(b) Waiver and mandated managed care. Representatives from Medicaid provider groups, Medicaid beneficiaries, community organizations and HMOs gave testimony. The NJHA did not attend and did not testify.

The Department offers the opportunity for public comment by the publication of N.J.A.C. 10:74 in the New Jersey Register and the NJHA has provided comments.

Over the past 12 month period, the Department has attended many meetings and conducted numerous presentations on the mandatory managed care program for beneficiaries, provider groups, community and advocacy groups and public officials. Additionally, a Managed Care Provider Forum was held on May 15, 1995 to once again allow the provider community the opportunity to voice their concerns and comments on the managed care program. Most recently, on May 18, 1995, the Department met with representatives from the NJHA to discuss their expressed concerns.

New Jersey views public, provider, community organization and beneficiary outreach concerning mandatory managed care as an ongoing and integral activity to strengthen communication, receive feedback, keep all interested parties up-to-date and informed of activities related to mandatory managed care.

18. COMMENT: NJHA questioned whether these rules are in fact effectuating the legislative intent of the New Jersey Medical Assistance and Health Services Act. They further stated that in order for a regulation to be valid administrative rules cannot frustrate the policy embodied in the statute.

RESPONSE: The Department believes it is effectuating the legislative intent and the Department further believes that the policy embodied in the statute is being carried out.

19. COMMENT: The NJHA suggested that the rules are vague and have addressed their additional concerns with comments on specific sections.

RESPONSE: The Department has made every effort to be clear in establishing the managed care regulations and does not believe that the rules at N.J.A.C. 10:74 are vague. The Department responds to the specific concerns of the NJHA elsewhere in this document.

20. COMMENT: The NJHA suggested that the implementation of the Medicaid managed care program contemplated in the rules, absent adequate public input, may contravene other agency requirements (42 C.F.R. 431.12(e)).

RESPONSE: The regulation cited requires that the Medical Assistance Advisory Council (MAAC) be kept informed of, and have the opportunity to participate in, the development of Medicaid policies and procedures. The mandatory managed care program was discussed with the MAAC at numerous meetings throughout the development process. The most recent update presentation was given to the MAAC on April 12, 1995.

Additionally, the Department held public hearings on June 6, 1994 attended by numerous provider and community groups.

21. COMMENT: NJHA suggested that they have not been provided with an adequate opportunity to participate in the development of any of the managed health care services program "guidelines", nor in the promulgation of the proposed rules.

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RESPONSE: The Department believes that the NJHA has been included in the development of the managed health care program by having the opportunity to respond to the proposed rules, N.J.A.C. 10:74, and by having the opportunity to testify at the Public Hearings. See Comment 17 above.

22. COMMENT: The NJHA speculated that hospitals could suffer damages as a result of the proposed managed care program.

RESPONSE: Under any managed care system, there is a change in the use of acute care facilities. The impact of the managed care program on particular hospitals depends on a variety of factors, such as whether certain hospitals become more efficient in their operation, and other developments in the changing health care environment.

Additionally, it should be noted that the Department has already contracted with hospital owned or affiliated HMOs in the managed care program. Thus, hospitals have some ability to affect the impact of the managed care program.

23. COMMENT: The NJHA stated that they have been unable to precisely assess the severity of the potential impact on New Jersey hospitals due to the absence of information and participation in the development process of the managed care program. The NJHA asked that the implementation of the program be stayed until such time as all pertinent background material, including rate information, is provided and an appropriate impact analysis is conducted.

RESPONSE: The Department believes that it is not possible to assess precisely the impact of the managed care program on New Jersey hospitals. The severity of the impact will depend on a variety of factors, such as efficiency, utilization, contracts established between the hospitals and the HMOs, and other factors which are not predictable. This uncertainty about the impact of the managed care program on hospitals is true in any managed care environment. However, this movement toward managed care is a development of which hospitals have been aware for years and for which they should have planned.

A description of the derivation of the capitation rates is included in N.J.A.C. 10:74 as Subchapter 12, Reimbursement.

24. COMMENT: The NJHA wanted assurances that hospitals are protected under the managed care system through imposition of the following requirements upon HMOs: a hospital dispute resolution process, fair payment provisions for hospitals, disproportionate share payments to hospitals, medical education payments to hospitals, emergency screening payments to hospitals, an escrow payment system to hospitals and other like protections.

RESPONSE: Hospitals and HMOs can negotiate these areas between themselves and structure their own protections, which may vary among hospitals. (As discussed elsewhere, disproportionate share payments, which are treated as separate payments from Medicaid to hospitals, pursuant to P.L. 1992, c.160, will continue to be paid separately from hospital rates, both in managed care and fee-for-service environments). Federal law controlling Medicaid payments to HMOs (SSA 1903(m)) does not require protections for hospitals in the HMO network. State law no longer includes the protection of individual hospitals as a governmental objective. (See N.J.S.A 26:2H-1, as amended by P.L. 1992, c.160.)

The concerns about protections voiced by the NJHA appear to be concerns that do not relate uniquely to the movement of Medicaid enrollees into managed care. Accordingly, the NJHA should raise its protections issues with the Department of Health and the Legislature, and not seek protections from Medicaid that do not exist for other managed care payers. Further, the purpose of the Medicaid managed care program is the provision of preventive health care and the avoidance of the need for hospital based care. Contracting with HMOs is intended to accomplish those goals, without unnecessarily burdening the relationship between the HMO and hospital.

Notwithstanding the Division's reluctance to impose additional requirements on contracts between HMOs and hospitals, the Division will accept hospital input in these areas as part of its HMO quality management activity. If a hospital experiences a problem with an HMO relative to the medical care of an HMO member enrolled through the Medicaid program, the hospital is encouraged to bring the issue to the attention of the Executive Director, Office of Managed Health Care in DMAHS, so the agency can determine if the HMO has breached its contractual obligations to the Medicaid program and/or the individual enrollee. A hospital should also report its concerns about the unmet medical needs of an HMO member, including Medicaid enrollees, to the Department of Health, which enforces HMO licensure requirements.

25. COMMENT: The NJHA requested that the rules be stayed in order to schedule a meeting between officials of the DHS and the NJHA, and that the rules be amended and republished for additional public comment.

RESPONSE: The Department conducted a meeting with NJHA on May 18, 1995 to discuss their expressed concerns. The Department is prepared to respond to the comments presented and does not believe that N.J.A.C. 10:74 should be stayed.

The Department has carefully considered all the comments received by April 6, as well as those received from the NJHA after the deadline (April 11), and does not believe amendments are necessary. Corrections and clarifications to N.J.A.C 10:74 have been made where necessary.

26. COMMENT: The NJHA noted that the proposed rules have already been published in the New Jersey Register despite the fact that the Health Care Financing Administration (HCFA) has not approved the waiver requested by the State to implement the Medicaid managed care program. NJHA further objects to the timing of this process because it effectively forecloses them and potentially other providers and consumers from raising concerns.

RESPONSE: Pursuit of adoption of N.J.A.C. 10:74 was contingent on HCFA approval of the State's waiver application. Please see Comment 17 above regarding time allowed for input.

27. COMMENT: The NJHA stated that Section 1915(b)(3) of the Social Security Act states that "the State will share cost savings resulting from the use of more cost-effective medical care with recipients by providing them with additional services." NJHA suggested that the rules should include the specific intended use of these savings.

RESPONSE: New Jersey's waiver application defines how cost-savings will be shared with Medicaid beneficiaries. Medicaid beneficiaries enrolled in various HMOs under the waiver will receive additional services not covered under the State Plan. Benefits including coordinated care and case management are provided by each participating HMO. Health education and counseling are required to be provided by each of the HMOs and are an integral part of case management and preventive health care. Additionally, the cited section of the Social Security Act does not require that a state share cost savings but identifies Social Security Act provisions that HCFA may waive if necessary to permit a State to share cost savings through the provision of additional services.

28. COMMENT: NJHA suggested that there needs to be clear delineation between the regulatory authority of the Departments of Health and Insurance (DOH/I) over HMOs and the Department of Human Services oversight of "capitated programs."

RESPONSE: HMOs continue to be subject to all applicable requirements of the Departments of Health and Insurance (DOH/I). HMOs participating in the State's managed care program continue to be regulated by these rules, as well as N.J.A.C. 10:74. There is a clear statutory delineation. The Department of Human Services standards are supplemental to DOH/I standards. (See N.J.A.C. 10:74-2.1(a)2.)

29. COMMENT: The NJHA expressed concerns that the Department may not realize the cost savings anticipated as a result of implementing the managed care system. They suggested that a funding mechanism needs to be in place to cover these unanticipated costs.

RESPONSE: Based upon the structure of the rate methodology at N.J.A.C. 10:74-12 which will not allow the Department to spend more for managed care than it would have spent under fee-for-service, the Medicaid Program expects to stay within budgetary caps.

30. COMMENT: The NJHA suggested that N.J.A.C. 10:74 does not provide for adequate protections for providers. They further requested that the rules be revised to incorporate sufficient protections for providers, including requirements that there be a provider dispute resolution process; fair payment provisions for providers; and other protections.

RESPONSE: Federal rules governing Medicaid managed care do not require the single state agency to adopt requirements such as those listed by the NJHA. Obtaining these protections is left to the provider in the negotiation process with the HMO.

There are, however, a number of protections relative to providers in the managed care contract, for example, timely payments to providers, network evaluation and ongoing monitoring of fiscal solvency.

31. COMMENT: The NJHA stated that they have been unable to determine how the rates were calculated and, more importantly, what is included in the rates, for example, disproportionate share (DSH), and graduate medical education (GME). They further state that rates must ". . . enable the hospitals to receive payments that are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities."

RESPONSE: The current capitation rate includes dollars for GME. Disproportionate share dollars are not included in the rate.

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Additionally, the commenter quotes the Boren amendment, which is not applicable to the managed care capitation rates.

32. COMMENT: The NJHA stated that the Federal Social Security Act mandates DSH payments to qualifying hospitals. They also stated that the need for such payments is not diminished by hospital rate negotiation between the HMOs and the hospitals.

RESPONSE: Hospitals will continue to be eligible for DSH payments outside of the managed care program. DSH payments will continue to be paid directly from DMAHS to hospitals pursuant to N.J.S.A. 26:2H-18.51 et seq. (Chapter 160) and N.J.A.C. 10:52-8.

33. COMMENT: The NJHA suggested that "funds for medical education must be explicitly maintained and paid directly by the Department to hospitals to ensure that these moneys fulfill their intended purpose, . . .".

RESPONSE: The Department disagrees. Hospitals may negotiate for GME funds via their contracts with HMOs. Please see the response to Comments 30 and 31 above.

34. COMMENT: The NJHA suggested that the rules include guidelines for the development of escrow agreements to assist in assuring provider payments. In order to assure that the managed care organizations do not unilaterally deny payment for appropriate delivery of health care services, the rules must provide procedural protections to the providers. They also cited the procedural requirements set forth in the hospital services manual at N.J.A.C. 10:52-9.1 as analogous to those which should be required as part of these rules.

RESPONSE: The Department requires fiscal solvency assurances of the HMO at the time the HMO applies to be a Medicaid managed care provider, and will monitor fiscal solvency on a continuing basis. Additionally, the State Department of Insurance imposes vigorous fiscal solvency requirements on all HMOs in the State. The Department also provides for timeliness of payment by the HMO to the provider in the managed care contract process.

N.J.A.C. 10:52-9.1 governs appeals by hospitals concerning payments made directly by the Department to the hospital. If the hospitals wish to assure a similar appeals mechanism with the HMO, they are free to negotiate it with the HMO.

35. COMMENT: The NJHA stated that there should be language regarding a provider dispute resolution process. They indicated this process should include an independent body to review and address disputes.

RESPONSE: Again, the hospital may negotiate with the HMO for these assurances. Please see the Response to Comment 30 above.

36. COMMENT: The NJHA stated that the issue of acceptable profits must be addressed so that funds designed to provide health care services for the poor are not diverted inappropriately by either not-for-profit or for-profit entities. The NJHA suggested that the Department should establish a community accountability mechanism by requiring contractors to demonstrate an investment of a specific percentage of profits in community-wide, health-related activities, rather than requiring excess profit or revenues be returned to the state.

RESPONSE: The Department encourages HMOs to address community health needs and requires by contract that the HMOs be culturally competent and perform outreach and education to the Medicaid beneficiaries. The contract also requires that a certain percentage of capitation moneys go to medical services. There is no requirement which calls for excess profits to be returned to the State.

Social Impact

Commenters: The commenters to this section are the New Jersey Primary Care Association (NJPCA).

37. COMMENT: The New Jersey Primary Care Association (NJPCA) commented that in the Social Impact statement it states that "non member" providers will not be reimbursed for providing unauthorized services to HMO member Medicaid eligibles. The NJPCA asked how Medicaid can refuse to pay a provider if a client demands services from a non-network provider for a HMO covered service. The NJPCA suggested that Medicaid must determine legitimate cases where payment to a provider is authorized.

RESPONSE: An integral aspect of the managed care program is the linkage of the Medicaid client to the primary care physician/CNP/CNS in the HMO. This important relationship serves to provide continuity of care and ensures access to quality health care. It is the non-HMO providers' responsibility to verify whether or not the client is part of an HMO and determine if the service may be provided outside of the plan. This is accomplished by a review of the Medicaid identification card, which lists the HMO in which the client is enrolled and provides a telephone number to call for information on covered services. The Department also routinely distributes via newsletter to Medicaid providers a list of services covered by the plans as well as those outside of the plan. Included in these newsletters are billing instructions for out-of-plan services.

N.J.A.C. 10:74-1 Definitions

Commenters to this section were: Pamela Ford, RN, MSN; Felician College; Karen B. Giquinto, MSN, RN, CS; Kristine M. Olson, MS, RN, NPC; Mercer Medical Center; New Jersey State Nurses Association; the Visiting Nurse Association of Central Jersey; Brookdale Community College; the University of Medicine and Dentistry of New Jersey; the New Jersey American College of Emergency Physicians; Dr. Like of the University of Medicine and Dentistry of New Jersey (UMDNJ); Legal Services of New Jersey; the New Jersey Optometric Association; the Division of Youth and Family Services; New Jersey Hospital Association (NJHA).

38. COMMENT: Pamela Ford, RN, MSN; Felician College: Karen B. Giquinto, MSN, RN CS; Kristine M. Olson, M.S., R.N., N.P.C.; Mercer Medical Center; New Jersey State Nurses Association, the Visiting Nurse Association of Central Jersey, Brookdale Community College and the University of Medicine and Dentistry of New Jersey suggested that the term primary care physician should be replaced with primary care provider and the definition of primary care provider should include nurse practitioner and also dieticians, social workers, dentists, physician assistants, nurse midwives, clinical psychologists, alcohol and drug counselors.

RESPONSE: The Department recognizes certified nurse practitioners (CNPs), clinical nurse specialists (CNSs) and certified nurse midwives (CNM) as health care providers of primary care services. The Department has modified language in Subchapter 3. Benefits (N.J.A.C. 10:74-3.1(d)1) to now read, "Primary care services.; such services may also include certified nurse midwives (CNM), certified nurse practitioners (CNP), clinical nurse specialist (CNS) and physicians assistants (PAs)." This change addresses comments regarding the addition of the advanced practice title of "clinical nurse specialist." The Department maintains the definition and use of the term primary care physician, however, the rules have been amended to include CNP and CNS with primary care physician, where appropriate. The Department has also added the following definition for CNP/CNS. "Certified Nurse Practitioner"/"Clinical Nurse Specialist" means a person licensed to practice as a registered professional nurse who is certified by the New Jersey State Board of Nursing in accordance with NJAC 13:37-7 et seq., or similarly licensed and certified by a comparable agency of the state in which he/she practices. The Department believes that these changes adequately address the concerns of the commenters regarding the recognition and inclusion of CNM/CNP/CNS in the managed care program. Primary care provider service provision by social workers, psychologists, etc., as suggested by several commentors, is not consistent with Federal regulations. The change on adoption to include CNP/CNSs reflect current New Jersey law and rules, and are within the appropriate scope of practice for such professionals. The addition of these professionals expands access to primary health care services for enrollees, consistent with the access available to the general public.

39. COMMENT: The New Jersey American College of Emergency Physicians (NJACEP) suggested two alternative definitions for "emergency services," one of which could have left the determination of an emergency service up to the individual seeking treatment. The other definition was that used by HCFA in relation to COBRA/OBRA/EMTALA. Dr. Like of UMDNJ suggested that the definition of "emergency services" conform to that in the Mandatory Medicaid Managed Care contracts. Legal Services of New Jersey (LSNJ) suggested the same language.

RESPONSE: In keeping with NJACEP's second suggestion, and those of Dr. Like and LSNJ, the Department has revised the definition of emergency services in accordance with Federal rules to now read: "Emergency services" means those services, within or outside of the Contractor's enrollment area, required to be provided to an enrollee as a result of an injury or the sudden onset of a serious illness having the potential of causing immediate disability or death, or requiring the immediate alleviation of severe pain, or the time required to reach the contractor's facilities or the facilities of a provider with which the contractor has arrangements, would have meant risk of permanent damage to the recipient's health."

40. COMMENT: The New Jersey Optometric Association (NJOA) requested that several definitions be added regarding participating provider, provider agreement, physician specialist and physician services.

RESPONSE: Physician specialist and physician services are defined in N.J.A.C. 10:49. The Department does thinks there is no need for these additional definitions as the usage of the terms participating provider and provider agreement in the rules is clear. The Department has clarified primary care services in N.J.A.C. 10:74-3.1(d).

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41. COMMENT: Dr. Like suggested criteria be developed to differentiate "true generalists" from subspecialists with regard to the definition of "primary care physician."

RESPONSE: The primary care physician must meet specific requirements in the care provided to Medicaid HMO beneficiaries. The Department has clarified the definition of primary care physician.

42. COMMENT: The Division of Youth and Family Services (DYFS) commented that the definition of DYFS be modified to add "or other state (DYFS) supported placements such as residential care," since the addition of this phrase is consistent with the intent of the DMAHS to treat DYFS clients similarly.

RESPONSE: The Department will add the phrase "or other State supported placements" to the definition. This change is not substantive because it clarifies the definition, consistent with the proposal's stated intent to exempt all DYFS-supported children from mandatory enrollment, and to allow voluntary enrollment.

43. COMMENT: The New Jersey Hospital Association (NJHA) asked how the definition of "health maintenance organization" is distinct from the definition of "Federally approved HMO" or "Federally qualified HMO."

RESPONSE: A health maintenance organization must meet the Division's definition of an HMO if it is not Federally qualified or Federally approved. Please see the definition of a health maintenance organization for the details of the State's requirements.

44. COMMENT: The NJHA requested that the following definitions be included, as they are referenced in N.J.A.C. 10:74:

—Contractor (N.J.A.C. 10:74-2.1(a))

—Managed care provider (N.J.A.C. 10:74-3.1(d)1, and (f))

—Emergency room services (N.J.A.C. 10:74-9(a)1

—Exhaustion of benefits (N.J.A.C. 10:74-12.7)

—PCP (N.J.A.C. 10:74-7.2(b))

RESPONSE: "Contractor" is defined in N.J.A.C. 10:74-1.3

"Managed care provider" in N.J.A.C. 10:74-3.1(d)1 has been changed for consistency to "HMO."

"Emergency room services" in N.J.A.C. 10:74-9.1(a)1 has been replaced by the new definition of Emergency Services. Please see Comment 38.

"Exhaustion of benefits" in N.J.A.C. 10:74-12.7. The language at this cite has been changed. It now reads: "For Medicaid covered services provided to an enrollee by the contractor or other Medicaid provider in excess of the stated limits set forth at N.J.A.C. 10:74-3.1, the Medicaid provider will be reimbursed by DMAHS according to the Medicaid fee schedule, provided that the participating provider has received a letter from the contractor saying that the stated limits have been exhausted." This text more clearly describes the process.

The Department has modified the definition of primary care physician to include the abbreviation "PCP" in N.J.A.C. 10:74-7.2(b).

45. COMMENT: The NJHA requested that the following new terms, which NJHA uses in a new section, N.J.A.C. 10:74-12.9, it wishes added, be defined: Disproportionate Share Payments and Graduate Medical Education Payments.

RESPONSE: These terms will not be used in the body of N.J.A.C. 10:74, for the reasons specified in Comments 31, 32 and 33 above.

N.J.A.C. 10:74-2 Contract Requirements

Commenters to this section were: the New Jersey Primary Care Association (NJPCA); Dr. Like of UMDNJ; Legal Services of New Jersey (LSNJ); the New Jersey Hospital Association (NJHA).

46. COMMENT: The New Jersey Primary Care Association (NJPCA) commented that there is no mention in the rules of the policy decision to require that HMOs contract with FQHC.

RESPONSE: This requirement for the HMO to contract with an FQHC is sufficiently detailed in HMO contract language.

47. COMMENT: Dr. Like proposed adding additional items to the responsibilities of HMO providers.

RESPONSE: The contract with the HMO details the responsibilities of the HMO in providing services to Medicaid beneficiaries. The HMO, in turn, must ensure that their providers meet the responsibilities of the HMO in the provision of services to Medicaid beneficiaries. Any additional requirements sought by individual providers can be addressed via the contract process between the HMO and the individual provider.

48. COMMENT: Dr. Like proposed modifying the text of N.J.A.C. 10:74-2.1(a)4 to add the word "disability" and make it consistent with language used in the mandatory managed care contract.

RESPONSE: To clarify the Department's intent, the word "disability" will be added to N.J.A.C. 10:74-2.1(a)4.

49. COMMENT: Legal Services of New Jersey (LSNJ) suggested modifying the language at N.J.A.C. 10:74-2.1 to assure adequacy of provider network standards.

RESPONSE: The proposed rules on Managed Health Care Services incorporate the minimum requirements regarding provider network standards in keeping with Federal statutes. The contract process allows for specific and additional requirements as deemed necessary by the Department.

50. COMMENT: The New Jersey Hospital Association (NJHA) requested that the phrase "on at least a six-month basis" be added after "instruct the provider" at N.J.A.C. 10:74-2.1(a)6.

RESPONSE: The Department believes that doing this on a six-month basis would actually diminish the contractor's responsibility. The mandatory managed care contract requires the HMOs to provide training and ongoing technical support to their providers. They also supply their providers with manuals of program operations. Providers have a responsibility to follow the policies and procedures of the HMO.

51. COMMENT: NJHA requested that the phrase "as well as the providers within its network" be added after the phrase and before "of its administrative organization and changed thereto . . ." at N.J.A.C. 10:74-2.1(a)9.

RESPONSE: This type of requirement can be negotiated between the provider and the HMO as part of their contract negotiations.

N.J.A.C. 10:74-3 Benefits

Commenters to this subchapter are: the New Jersey Association of Mental Health Agencies, Inc. (NJAMHA); the New Jersey Psychological Association (NJPA); the New Jersey Department of Human Services, Division of Youth and Family Services (DYFS); the New Jersey Family Planning League, Inc. (NJFPL); the Family Planning Association of New Jersey (FPANJ); the Medical Society of New Jersey (MSNJ); the New Jersey Primary Care Association (NJPCA); Bacharach Rehabilitative Hospital (BRH); Kessler Institute of Rehabilitation; Felician College; the University of Medicine and Dentistry of New Jersey (UMDNJ); Burton W. Brenman, Inc.; Public Strategies/Impact, LLC (PS/I); the New Jersey Optometric Association (NJOA); Legal Services of New Jersey (LSNJ); the New Jersey Hospital Association (NJHA).

52. COMMENT: The New Jersey Association of Mental Health Agencies, Inc., the New Jersey Psychological Association and the New Jersey Department of Human Services, Division of Youth and Family Services, commented on case management of mental health services, personal care services, and substance abuse services by the managed care provider. The New Jersey Association of Mental Health Agencies expressed concern that the phrase "case managed" may be construed to go beyond the coordination of services and could even be interpreted to mean that the managed care provider would authorize or otherwise be responsible for these fee-for-service programs. They further objected to any interpretation of subsection (e) which would give the managed care contractor any responsibility or authority over the fee-for-service provider.

RESPONSE: Mental health services, substance abuse services, including diagnosis, treatment and detoxification, and costs for methadone and its administration will not be case managed by the managed care provider. These services should have been listed at N.J.A.C. 10:74-3.1 (g). This is a correction to the originally proposed rules. There is, however, an expectation that the managed care provider will give assistance by way of a referral to an appropriate mental health/substance abuse provider, as needed.

Personal care services shall remain in the fee-for-service program but shall be case managed by the managed care provider. Coordination of the services as well as appropriate and full communication between the managed care provider and the fee-for-service provider is an expected part of this case management. The managed care provider will not be responsible for authorizing these services.

53. COMMENT: The New Jersey Family Planning League, Inc., and the Family Planning Association of New Jersey were concerned about Medicaid clients being made aware of the "freedom of choice" available to them with regard to family planning services. The Family Planning Association of New Jersey commented specifically on the availability of abortion services without prior authorization.

RESPONSE: The Department believes that adequate information is communicated to Medicaid clients regarding Family Planning services from both the Health Benefits Coordinator (HBC) and the HMOs, in addition to the publication of N.J.A.C. 10:74. The HBC material given to the clients upon enrollment provides a "special notice" concerning family planning services. In addition, the Department reviews all HMO marketing materials to ensure that adequate and appropriate information is provided regarding, but not limited to, the service package of benefits. This includes the clients' freedom of choice in

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accessing family planning services. The Department believes that this information also adequately addresses the availability of abortion services, which are handled on a fee-for-service basis, for which no prior authorization is required.

54. COMMENT: The Medical Society of New Jersey (MSNJ) commented that highly rigorous pre-certification and prior authorization procedures should be limited. They felt that the HMOs should be required to have user-friendly, quick-response systems.

RESPONSE: It is a common operational practice for HMOs to institute pre-certification and prior authorization procedures to control for unnecessary utilization. The Department believes the HMOs should be permitted to design their systems for efficient case management service coordination and appropriate utilization control. The Department agrees HMOs should operate user-friendly, quick-response systems and these are reviewed with the HMOs as part of the contracting process.

55. COMMENT: The MSNJ commented that the wording (N.J.A.C. 10:74-3.3(a)1) should be adjusted to note that routine foot care for diabetic patients tends to be reimbursable, due to its high preventive value and cost-effectiveness.

RESPONSE: The language in N.J.A.C. 10:74-3.3(a)1 states that Medicaid does not ordinarily cover routine foot care. This section pertains to the coverage and limitations of the general Medicaid Program which are currently in effect, and which will apply to managed care. Medically necessary foot care for the diabetic patient is part of the Medicaid program and will also be part of the managed care program.

56. COMMENT: The MSNJ commented that the Department should specify the need to reimburse cost-effective preventive services.

RESPONSE: The Department believes that the rules provide a general basis to include preventive health services. Specific preventive health services are delineated in the contract process and will periodically change based on community and program needs.

57. COMMENT: The New Jersey Primary Care Association (NJPCA) commented that the standard service package includes transportation services as only ambulance, MICUs and invalid coach. They suggested that Medicaid should have ensured that cap rates were adequate to cover transportation services.

RESPONSE: In the Medicaid Managed Care Program, lower mode transportation services will remain fee-for-service. The remaining transportation services are adequately addressed in the capitation rate.

58. COMMENT: Bacharach Rehabilitative Hospital (BRH) commented that the statement regarding provision of the standard service package does not allow for any statewide standards of care.

RESPONSE: Services are to be provided in accordance with Medicaid program standards in amount, duration and scope. HMOs will not have the authority to independently interpret Medicaid program rules. HMO providers are expected to provide care that is medically necessary. Non-HMO providers must follow managed care rules, that is, contact the HMO for authorization prior to rendering any service that is included in the HMO benefits package.

59. COMMENT: BRH asked whether licensed comprehensive rehabilitation hospitals are included under inpatient hospital services and does inpatient services include non-licensed "sub-acute" rehabilitation services in long term care facilities?

RESPONSE: Inpatient hospital services addressed under the benefits section refers to acute care hospitals, and special hospitals which includes all rehabilitation hospitals. Rehabilitation services in nursing facilities are not included under the HMO benefits package.

60. COMMENT: BRH asked whether cardiac rehabilitation and pulmonary rehabilitation, sleep disorders, and treatment for eating disorders are included in rehabilitation services?

RESPONSE: Outpatient rehabilitation services includes: physical therapy, occupational therapy, speech/language, and hearing services. The services mentioned by the commenter are classified as physician services and have no limits.

61. COMMENT: BRH commented that Medicaid has never allowed physical therapy by independent practitioners. BRH suggested that the cost benefits for the most appropriate care at the most appropriate facility should be the major concern in providing adequate access in the most efficient manner.

RESPONSE: Under managed care, Medicaid does allow for independent physical therapists as subcontractors in a HMO provider network. Rules governing this reimbursement were contained in N.J.A.C. 10:49-19.

62. COMMENT: Kessler asked where the provision of Comprehensive Rehabilitation Hospital service fits in and does it fall under inpatient hospital?

RESPONSE: See response to Comment 59 above.

63. COMMENT: Kessler asked whether the 60 visits per therapy per contract year under rehabilitation services is for only outpatient services?

RESPONSE: The 60 days per year pertain only to outpatient rehabilitation services. "Outpatient" has been added to N.J.A.C. 10:74-3.1(d)11 for clarification.

64. COMMENT: Felician College and the University of Medicine and Dentistry of New Jersey (UMDNJ) suggested that the definition of primary care physician should be modified to include nurse practitioners, clinical nurse specialists and all nurse midwives, as well as, licensed or certified clinical psychologists, social workers, alcohol and drug counselors, and dieticians.

RESPONSE: The statement in the rules has been modified to include certified nurse practitioners and clinical nurse specialists. Certified nurse midwives are also included in the statement. In the context of the Medicaid Managed Care Program, the Department does not equate the services provided by a physician with the services provided by social workers, dietitians, etc. and will not modify its definitions in this regard, because the scope of practice of such individuals does not include provision of the full scope of comprehensive primary care services. However, the scope of practice of CNP/CNSs does include provision of comprehensive primary care services.

65. COMMENT: Mr. Brenman requested that durable medical equipment (DME) be exempted from the services provided. Mr. Brenman was concerned that clients with chronic needs, for example, cerebral palsy, spina bifida, muscular dystrophy, etc., be permitted to maintain the relationship they have had with a DME provider who has supported them for many years. Mr. Brenman did recognize that the chronic need Medicaid population will not be mandated into managed care, however, he felt that they would voluntarily enroll and thus "lose" their established relationship with a DME provider.

RESPONSE: DME will remain in the benefits package to be provided by the HMO. Mr. Brenman is correct in that the chronically ill (cerebral palsy, spina bifida, muscular dystrophy) person would often be a Supplemental Security Income (SSI) Medicaid eligible and so will not be mandated into managed care. This population may indeed enroll voluntarily. Since the enrollment will be voluntary, should the client decide that they do not wish to remain in the HMO, they may elect to disenroll in keeping with the provisions of N.J.A.C. 10:74-7.

Additionally, the Department actively encourages and supports a dialogue between current Medicaid providers and the State-contracted HMOs so that current Medicaid providers may become HMO providers.

66. COMMENT: Public Strategies recommended that the rules be amended to either set financial and utilization guidelines for mental health/substance abuse services and have them managed by HMOs under a capitation rate or plan for a Statewide carve-out of mental health/substance abuse services.

RESPONSE: Please refer to the response to Comment 52. Mental health services, substance abuse services, including diagnosis, treatment and detoxification and costs for methadone and its administration will not be case managed by the managed care provider. These services are carved out of mandatory managed care and will remain FFS.

67. COMMENT: The New Jersey Optometric Association (NJOA) recommended that the phrase "optometry services" be clarified.

RESPONSE: N.J.A.C. 10:74-3.1(d) has been amended to add clarity. It now refers to optometrist services.

68. COMMENT: Legal Services of New Jersey (LSNJ) suggested that the EPSDT protocol be adopted as part of these rules.

RESPONSE: The provision of services in the managed care program must be in accordance with Medicaid program standards in amount, duration and scope. This applies to EPSDT services.

69. COMMENT: LSNJ suggested amending requirement N.J.A.C. 10:74-3.6(a) by including after "services," the phrase "according to the Provider Network Standards appended to and made part of these rules."

RESPONSE: Please see the response to Comment 2 above.

70. COMMENT: LSNJ suggested amending the language at N.J.A.C. 10:74-3.6(c) to further address provider network standards.

RESPONSE: Please see the response to Comment 2 above.

71. COMMENT: The New Jersey Hospital Association (NJHA) suggested that the use of the phrase "risk comprehensive contracts" in N.J.A.C. 10:74-3.1(a) is inconsistent with the definition of "risk comprehensive contract" in the definitions section.

RESPONSE: This language has been modified to be consistent. Both sections now reference the Federal definition found at 42 CFR 434.21.

72. COMMENT: The NJHA suggested that at N.J.A.C. 10:74-3.1(b) and (d) the scope of the "standard benefits package" is unclear.

RESPONSE: N.J.A.C. 10:74-3.1(b) refers to the fee-for-service Medicaid program and the Department believes it to be clear as stated.

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73. COMMENT: The NJHA requested that the following language be inserted at the end of subsection (c): "HMOs shall develop pre-certification and prior authorization programs that are based on standard industry models and that require prompt responses by the HMO to health care provider requests for pre-certification or prior authorization. Pre-authorization review determination for procedures or admissions should be provided in writing within two business days and admission review, estimated length of stay decisions and concurrent review decisions communicated to all providers (hospitals and physicians) in writing within 24 hours of the request for review. Retrospective review decisions should be made within five days. If determinations are not received within these time periods, then it shall be deemed to be an approval."

RESPONSE: The Department will not add the suggested language. Please see Comment/Response 30 above.

74. COMMENT: The NJHA suggested that at N.J.A.C. 10:74-3.1(d)2, many of the services listed do not seem to fall into the category of "preventative health care and counseling."

RESPONSE: This subsection has been internally recodified and clarified.

75. COMMENT: The NJHA stated that N.J.A.C. 10:74-3.1(e) was unclear as to whether or not the listed services will be paid for if the enrollee seeks them without approval from the case manager.

RESPONSE: N.J.A.C. 10:74-3.1(e) addresses those services which will remain in the fee-for-service environment but be case managed by the HMO. Services which are out-of-plan (fee-for-service) and case managed will be coordinated by the managed care provider. It is expected that this coordination will include appropriate and full communication between the managed care provider and the fee-for-service provider. For additional detail, see the response to Comment 37 above.

76. COMMENT: The NJHA stated that they did not understand the impact to hospitals of the Department's approving additional services, activities or products that the HMO has opted to provide outside its capitated rate.

RESPONSE: HMOs may provide services, with Department approval, not traditionally covered by the Medicaid program, such as eyeglass upgrades and smoking cessation programs. These services would not be expected to have any impact on hospital services.

77. COMMENT: NJHA commented on N.J.A.C. 10:74-3.1(g) and (e). Subsection (g) states that services provided in a psychiatric hospital will remain in the fee-for-service system without requiring case management. However, subsection (e) states that mental health services will be case managed.

RESPONSE: Please see Comment/Response 52 above.

78. COMMENT: NJHA stated that it is not clear that an enrollee or his or her physician will always know on the date of admission that treatment is to be "long-term" (N.J.A.C. 10:74-3.1(h)). They feel that the term should be deleted from the sentence. Further they indicate that the subsection should state that the disenrollment will be "effective" as of the date of admission rather than "on the date of admission."

RESPONSE: The word "effective" has been added to this section for clarification. Whether or not the placement is long term may or may not be known at the time of admission. Once it is determined (in keeping with contract specifications), the individual will be disenrolled retroactive to the date of admission.

79. COMMENT: The NJHA proposed adding new subsections (e) and (f) to N.J.A.C. 10:74-3.2. In subsection (e), the NJHA wants assurances that rates and fees from the HMO shall be adequate and reasonable to meet the needs of efficiently and economically operated facilities.

In subsection (f), the NJHA wants the Department to regulate that the HMO indemnify the health care provider.

RESPONSE: Please see Comment/Response 51 above.

80. COMMENT: N.J.A.C. 10:74-3.4(a). The NJHA stated that they did not understand the Department's rationale for requiring the reporting of services provided above the minimum. The NJHA suggested the deletion of the phrase "but shall be reported on an encounter."

RESPONSE: The Department has deleted the phrase in question which was inserted in error.

81. COMMENT: N.J.A.C. 10:74-3.4(a)5. The NJHA stated that they did not believe an HMO would report the use of equipment that had not been properly approved. Therefore, the NJHA did not understand the rationale for this paragraph.

RESPONSE: The deletion identified in the response to Comment 80 addresses this issue.

82. COMMENT: N.J.A.C. 10:74-3.6(d). The NJHA suggested that this provision is unclear and requests that it be rewritten to clarify its intent.

RESPONSE: The Department does not consider this to be unclear. Additionally, see the definition of "service area" for additional detail.

N.J.A.C. 10:74-4 Marketing

Commenters to this section are: the New Jersey Primary Care Association (NJPCA); the Family Planning Association (FPA); Legal Services of New Jersey (LSNJ).

83. COMMENT: The New Jersey Primary Care Association (NJPCA) and the Family Planning Association comment that it is not clear in this section what the HBCs role is in regard to marketing and what marketing the HMO may perform.

RESPONSE: The HBC is not involved in marketing to the Medicaid client. Their primary responsibility is to assist the Medicaid eligible in the selection of and enrollment into a managed care plan. Marketing standards are detailed in the contract between the HMO and the Department.

84. COMMENT: The NJPCA wanted clarification on the $10.00 HMO promotional giveaway to any one individual. They asked if this amount was on a yearly basis and asked whether the HBC or HMO would be responsible for handing out these materials.

RESPONSE: The HBC will not be distributing HMO promotional giveaways. The HMO may continue to have face to face contact with Medicaid clients and will distribute these materials if they so choose. The HMO promotional giveaways for marketing purposes may not exceed an amount of $10.00 to any one individual or family per marketing encounter.

85. COMMENT: Legal Services of New Jersey (LSNJ) was concerned with coercive marketing techniques and suggests amending language at N.J.A.C. 10:74-4.1(b)6.

RESPONSE: The Department believes that the contract between the HMO and the State adequately addresses standards for marketing. The Department shares LSNJ's concern with this issue and believes the contract language and oversight provided by the Department are adequate to address the concern.

N.J.A.C. 10:74-5 Information Provided to Enrollees

Commenters to this section are : Legal Services of New Jersey (LSNJ); the New Jersey Hospital Association (NJHA).

86. COMMENT: Legal Services of New Jersey (LSNJ) suggested inclusion of a detailed statement of enrollee rights and detailed requirements for a member handbook be given to each enrollee at least one day prior to the effective date of enrollment.

RESPONSE: Subchapter 5 of the proposed rules addresses information to be provided to an enrollee. Additional detail regarding enrollee rights and information to be given to an enrollee is contained in the HMO contract. As a result of the recommendations of the Department's Managed Care Task Force, the Department will continue to develop language for expanding enrollee rights for inclusion in future contracts.

87. COMMENT: N.J.A.C. 10:74-5.1(a). The New Jersey Hospital Association (NJHA) stated that the term "prepaid health plan" is not defined or used elsewhere in the proposed regulation. They suggested that the term be deleted.

RESPONSE: The term has been deleted.

88. COMMENT: N.J.A.C. 10:74-5.1(b) and (c). The NJHA stated that these subsections are overlapping. They suggest that these provisions be rewritten.

RESPONSE: The Department has changed the language here. N.J.A.C. 10:74-5.1(b)3 now reads: "Specific written details on benefits, limitation, exclusion, and availability and location of services and facilities. Thereafter, such notification shall be provided whenever there are significant changes in the services provided or the locations where they can be obtained, or other changes in program nature but not less than annually." N.J.A.C. 10:74-5.1(c) now reads: "Such information shall be provided to each enrolled family household at least 10 days prior to such change."

89. COMMENT: 10:74-5.1(b)4. The NJHA requested that enrollees be provided an explanation of procedures on a quarterly basis to ensure appropriate utilization of benefits and, more specifically, the use of emergency care.

RESPONSE: The enrollee is already aware of the address and telephone number of the PCP. This information is on their HMO identification card. Enrollees will be advised of changes at least annually and it is in the best interest of the plan to educate the enrollee about service use. The HBC is also available to assist and provide education to enrollees, as well.

90. COMMENT: The New Jersey Family Planning League (NJFPL) commented that there is no reference to the HBC in this or the next section.

RESPONSE: The HBC is an agent of the State, under contract with the Department to provide client education, advocacy and enrollment. As such,

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they are governed by the provisions of the State's contract. The rules, procedures and scope of HBC activities will not be found in the rules but are incorporated in the contractually required internal office procedures developed with approval of the Department and speak to the goals, objectives and daily operations of the HBC.

N.J.A.C. 10:74-6 Enrollment

Commenters to this section are: Legal Services of New Jersey (LSNJ); the Hospital Association of New Jersey (NJHA).

91. COMMENT: Legal Services of New Jersey (LSNJ) suggested that there may be times when enrollment may not be appropriate for the entire case, as stated in this section.

RESPONSE: Currently any HMO enrollment must be for the entire case (same Medicaid number), due to the restrictions imposed by the data processing system which generates the Medicaid card. It is not currently possible to "split" a Medicaid eligible household for HMO enrollment purposes.

92. COMMENT: N.J.A.C. 10:74-6.1(d) and (f). The New Jersey Hospital Association (NJHA) stated that these two subsections should be consolidated so that the enrollment/disenrollment features are consistent among the different entities. NJHA further states that health care providers may be subject to disputes as to whether an individual was an enrollee at the time the service was rendered.

RESPONSE: The Department believes that these subsections are adequate as written. Federal statute dictates differences between HMO status regarding lock-in provisions. Additionally, Medicaid eligibility and HMO coverage may be verified via the Recipient Eligibility Verification System (REVS) and/or the Medicaid identification card.

N.J.A.C. 10:74-7 Disenrollment

Commenters to this section are: the New Jersey Hospital Association (NJHA).

93. COMMENT: N.J.A.C. 10:74-7.2(b). The New Jersey Hospital Association (NJHA) requested that this subsection be rewritten to clarify its intent.

RESPONSE: This section has been rewritten to now read. "After this first 30 day period and for the next five months, the enrollee may elect to disenroll, with cause. Good cause must be determined on a case by case basis, upon notification to the State. Good cause reasons may include, but are not limited to, failure of the contractor to provide services to the enrollee, . . ."

N.J.A.C. 10:74-8 Enrollment

Commenters to this section are: the New Jersey Primary Care Association (NJPCA); Kessler Institute of Rehabilitation, Inc.; the New Jersey Association of Health Care Facilities (NJAHCF); Legal Services of New Jersey (LSNJ); the New Jersey Hospital Association (NJHA).

94. COMMENT: The New Jersey Primary Care Association (NJPCA) noted that in the exclusions and exemptions sections there is no mention of a patients' right to have access to FQHC services. The Plainfield Neighborhood Health Services Corporation suggested that FQHC provisions be stipulated in the rules.

RESPONSE: Access to an FQHC is not considered an exclusion or exemption from managed care. Detail regarding this access is contained in the contract between the HMO and the State, in accordance with Federal statute. This information is also part of the informational material distributed to the client.

95. COMMENTS: The NJPCA questioned how Medicaid clients will be told as part of the exclusion/exemption section, that they do not have to be locked in for a six month period if the HMO is not Federally qualified and how clients will be informed of the list of exemption/exclusions. The Association for Children of New Jersey also asked how clients will be informed about exemptions/exclusions.

RESPONSE: The Department has contracted with Foundation Health Federal Services (FHFS) to be the Health Benefits Coordinator (HBC) for Medicaid's managed care program. One of the major responsibilities of the HBC is informing Medicaid clients about managed care. This includes providing clear information about the available HMOs as well as information on exemptions. The HBC will provide written information to clients and will also be available to speak with clients on the telephone or in person. The Department is confident that the HBC will meet its contractual requirements and provide all the information necessary to clients so that they may make a well-informed decision regarding how they will receive their health care.

96. COMMENT: The NJPCA stated that using a standard of 30 miles and two physicians is not ensuring access for many individuals who live in the city and may have to travel to a provider.

RESPONSE: The exemption for two PCPs within 30 miles is an outside measurement. This is a generally accepted national standard for exempting individuals from a managed care program if they choose exemption. Additionally, client requests for exemptions will be reviewed for distance and time travel hardship on a case by case basis.

97. COMMENT: Kessler questioned how the exemption process will occur and expressed concern about the need to ensure that adequate services are provided for anyone who becomes debilitated through injury or illness.

RESPONSE: In general, individuals with a chronic, debilitating illness or injury may be eligible for Medicaid through the Supplemental Security Income (SSI) program. They would not be required to enroll or remain enrolled in a managed care program, if they did not desire to do so. AFDC and AFDC related individuals who are injured or disabled prior to HMO enrollment would be exempted, if requested due to an established physician relationship. Once enrolled, however, we would not disrupt established physician relationships in the HMO setting. It is the HMOs responsibility to provide appropriate and adequate services for any injury or illness.

98. COMMENT: The New Jersey Association of Health Care Facilities (NJAHCF) asked whether "residential facility" includes residential health care facilities (RHCFs) licensed by the New Jersey Department of Health. If so, they requested that N.J.A.C. 10:74-8.2(a) be supplemented to add: "Individuals who are Medicaid eligible and who reside in a RHCF licensed by the Department of Health."

RESPONSE: The addition of the word "treatment" to N.J.A.C. 10:74-8.2(a)3 clarifies the intent and addresses the concern of this commenter, since the Department of Human Services did not intend to exclude residents of group settings who obtain their treatment outside those settings, such as group homes.

99. COMMENT: Legal Services of New Jersey (LSNJ) stated that there in no exemption criteria for English or Spanish speaking individuals.

RESPONSE: The HMOs are required to meet bilingual (English/Spanish) requirements and are required to maintain a provider network which accommodates Spanish speaking individuals. As such, there is no automatic exemption for a Spanish speaking person.

100. COMMENT: LSNJ commented that criteria for random assignment of Medicaid beneficiaries should include such things as proximity to a particular HMO or special medical or family needs.

RESPONSE: The Department will give Medicaid beneficiaries sufficient time and information and will strongly encourage beneficiaries to select an HMO. In those limited situations where no selection is made, the assignment will be made on a random basis. Even after assignment, the individual may transfer to a plan of choice within the first 30 days after the enrollment effective date.

101. COMMENT: The New Jersey Hospital Association (NJHA) suggested that subchapter 8 should either be retitled or subsumed under subchapter 6, since they have the same titles.

RESPONSE: N.J.A.C. 10:74-6 is now titled "General Enrollment." Subchapter 8 is now titled "Enrollees."

102. COMMENT: N.J.A.C. 10:74-8.3. The NJHA suggested that this section should be retitled to make it distinct from N.J.A.C. 10:74-8.7, since the titles are virtually identical.

RESPONSE: The Department has removed N.J.A.C. 10:74-8.7 from the rules. The information contained in that subsection is contained in other sections of the rules.

N.J.A.C. 10:74-9 Emergency Services

Commenters to this section are: Kessler Institute of Rehabilitation, Inc.; New Jersey Hospital Association (NJHA).

103. COMMENT: Kessler commented that when describing emergency services there should be mention of the need to include a well-integrated rehabilitation service for those who require such care.

RESPONSE: The definition for emergency has been modified and follows the definition found in Federal rules, which the Department believes is sufficient. Rehabilitation services are addressed elsewhere in the rules.

104. COMMENT: N.J.A.C. 10:74-9.1. The New Jersey Hospital Association (NJHA) requested to add a subsection (d) as a protection with regard to the provision of emergency room services. They suggested that hospitals should be reimbursed a screening fee to cover the cost of determining the appropriate level of care needed.

RESPONSE: Please see Comment/Response 51 above.

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N.J.A.C. 10:74-10 Medical Records; Peer Review and Quality assurance

Commenters to this section are: the Medical Society of New Jersey (MSNJ); Legal Services of New Jersey (LSNJ); the New Jersey Hospital Association (NJHA).

105. COMMENT: The Medical Society of New Jersey (MSNJ) commented that medical records should be maintained in a manner consistent with the rules and guidelines of the Board of Medical Examiners.

RESPONSE: The Department believes that the wording in this section "... consistent with good medical and professional practice ..." covers all appropriate professional boards.

106. COMMENT: The MSNJ commented that the rules do not adequately emphasize the need to comply with the quality assurance programs to be conducted under contract with the Division of Medical Assistance and Health Services. The New Jersey Optometric Association requested additional language to this section, as well.

RESPONSE: The Quality Assurance section in the rules presents a general outline of quality assurance requirements which should remain stable. The contracting process provides a means to require more specific quality assurance standards and monitoring protocols which are not static but change often to accommodate new techniques, new perspectives, etc.

107. COMMENT: Legal Services of New Jersey (LSNJ) recommended detailing the credentialing process that HMOs must require in this chapter.

RESPONSE: The Department believes that this subchapter is sufficient as written for the rules which provide the minimum basic requirements. The contracting process provides for specific details.

108. COMMENT: N.J.A.C. 10:74-10.2. The New Jersey Hospital Association (NJHA) suggested that the sentence be amended so that a description of a contractor's system of internal peer review shall be submitted to providers participating in the network.

RESPONSE: Please see Comment/Response 51 above.

109. COMMENT: N.J.A.C. 10:74-10.2(d). The NJHA requested that this subsection be inserted as follows: "The contractors shall be held responsible for the action of its subcontractors."

RESPONSE: Please see Comment/Response 51 above.

110. COMMENT: N.J.A.C. 10:74-10.3(B). The NJHA requested that this sentence be inserted into this subsection as follows: "The contractor will provide such standards to any contracting health care provider upon request."

RESPONSE: Please see Comment/Response 51 above.

111. COMMENT: N.J.A.C. 10:74-10.3(C). The NJHA requested the insertion of the following phrase in the first sentence. The contract shall "... submit to the division for approval as well as to the providers participating in the network, a detailed plan ...".

RESPONSE: Please see Comment/ Response 51 above.

N.J.A.C. 10:74-11 Grievance Procedure

Commenters to this section are: the Medical Society of New Jersey (MSNJ); Robert C. Like, M.D., M.S.; New Jersey Hospital Association (NJHA); Legal Services of New Jersey, Inc. (LSNJ).

112. COMMENT: The Medical Society of New Jersey (MSNJ) commented that the grievance and complaint procedures should be accessible to providers and enrollees so that enrollees are not advised that the fault lies with the provider and the provider is instructed to implement the restrictions that are the subject of the complaint.

RESPONSE: Providers have the ability to require access to the HMO complaint and grievance process through their contract negotiations with the HMOs.

113. COMMENT: Dr. Like proposed modifying the grievance procedures to be specific to HMO health care providers.

RESPONSE: Please see the response to comment 51 above.

114. COMMENT: N.J.A.C. 10:74-11.1. The New Jersey Hospital Association (NJHA) requested that a new subsection (e) be added. "(e) Grievance procedures shall include an ombudsman with the authority to conduct investigations, ... and make recommendations. The ombudsman shall be independent from the contractor."

RESPONSE: Please see Comment/Response 51 above.

115. COMMENT: Legal Services of New Jersey (LSNJ) commented that subchapter 11 leaves the development of a grievance procedure up to the HMO contractors without any guidelines. They further commented that the regulations should require the HMOs to set timeframes for grievance resolution and provide written notice to enrollees of the outcome of each grievance.

RESPONSE: The rules provide the basic structure of a grievance process and the HMO contract specifies the required elements which are communicated in writing to enrollees. The HMOs are required to follow the HCFA guidelines for grievance procedures. The required timeframes, written notice to enrollees of outcomes, and the HCFA process are delineated in the contract.

N.J.A.C. 10:74-12 Reimbursement

Commenters to this section are the New Jersey Hospital Association (NJHA).

116. COMMENT: N.J.A.C. 10:74-12.1(b). The NJHA requested that the following subsection be added. "(b) Information provided under (a) above will be made available to any interested party upon request."

RESPONSE: Please see Comment/Response 51 above.

117. COMMENT: N.J.A.C. 10:74-12.3(d). The New Jersey Hospital Association (NJHA) requested that the following subsection be added. "(d) Data support for the capitation rates determined pursuant to (a) through (c) above shall be made available to any interested party upon request."

RESPONSE: There is no need to add this language. The Department will produce upon request whatever information requestors are entitled to receive under the Right To Know Law.

118. COMMENT: N.J.A.C. 10:74-12.3(c)5. The NJHA requested that the derivation of these "reduced utilization factors" be defined and that paragraph (c)5 then be rewritten.

RESPONSE: Please see Comment/Response 117 above.

119. COMMENT: N.J.A.C. 10:74-12.4(c). The NJHA requested that the following subsection be added. "(c) Data support for any changes in capitation rates shall be made available to any interested party upon request."

RESPONSE: Please see Comment/Response 117 above.

120. COMMENT: The NJHA proposed adding a new rule at N.J.A.C. 10:74-12.9 which states: "Disproportionate share and graduate medical education payments. The Department shall directly reimburse hospital disproportionate share payments and medical education payments."

RESPONSE: Please see Comments/Responses 31, 32 and 33 above.

N.J.A.C 10:74-14 Contract Sanctions

Commenters to this section are the Medical Society of New Jersey (MSNJ).

121. COMMENT: The MSNJ expressed concern that the sanction system will place providers at risk for an HMOs failure to abide by DMAHS requirements. They suggested that accountability should remain with the HMO.

RESPONSE: Certain sanctions are required through Federal statutes and both the HMO and subcontractors are subject to these rules. Additional requirements for provider protection should be negotiated between the HMO and the provider.

The New Jersey Hospital Association provided comment on three items subsequent to the comment closing period. Comments and responses are as follows:

122. COMMENT: NJHA asked if in N.J.A.C. 10:74-3.1(d) which describes "health services provided to HMO enrollees" inpatient hospital services include rehabilitation hospital services.

RESPONSE: Please see response to Comment 59 above.

123. COMMENT: NJHA expressed concerned that N.J.A.C. 10:74-3.3(a) would disallow reimbursement to both inpatient acute care hospitals and comprehensive rehabilitation hospitals for the provision of these services.

RESPONSE: The words "inpatient and" were inadvertently omitted from this section and have been added.

124. COMMENT: NJHA cited N.J.A.C. 10:74-3.1(e)2 and 3 as being inconsistent.

RESPONSE: Please see response to Comment 52 above.

Summary of Changes upon Adoption:

1. The DMAHS wishes to note that references to "SSI" in the Summary that appeared in the proposal should have been to "Supplemental Security Income (SSI)" as indicated in the definition (27 N.J.R. 853, 857).

N.J.A.C. 10:74-1.3 Definitions

2. The definition of "benefit package" referenced Appendix A. Appendix A was removed and incorporated into the body of the rules as N.J.A.C. 10:74-3.1. The definition now reads: "Benefit package" means the services which the contractor has agreed to provide, arrange for, and be held fiscally responsible for, which are set forth in N.J.A.C. 10:74-3.1 Scope of benefits. This change is made for consistency.

3. A definition of "bi-lingual" has been added which is consistent with the language contained in the contract with the HMO, and with the standards used by other State programs, in education, health and public assistance.

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4. In the definition of "capitation rate" Appendix A has been replaced with N.J.A.C. 10:74-3.1. This change is being made for the reason given in 2, above.

5. The definition of "DYFS" has been amended to read: "Division of Youth and Family Services (DYFS) means the component ... DYFS beneficiaries who are eligible for Medicaid are financially eligible children in foster care or other State supported placements". This provides a more clear and complete definition, and is consistent with the intent of the proposal.

6. The definition of "emergency services" has changed. The definition now reads as follows: "Emergency services" means those services, within or outside of the Contractor's enrollment area, required to be provided to an enrollee as a result of an injury or the sudden onset of a serious illness having the potential of causing immediate disability or death, or requiring the immediate alleviation of severe pain, or the time required to reach the contractor's facilities or the facilities of a provider with which the contractor has arrangements, would have meant risk of permanent damage to the recipient's health."

The agency has expanded the definition as a benefit to beneficiaries who might become seriously ill regardless of the place of illness. In addition, the agency has included situations resulting from injury or sudden onset of a serious illness. This more inclusive definition will benefit both beneficiaries and non-HMO providers who would be treating these beneficiaries. This new definition follows the federal definition of Emergency Services.

7. The definition of "PCM" has been deleted, since this term is not used in the body of the rules.

8. After "primary care physician" in the definitions, the terms "certified nurse practitioner/certified nurse specialist" were added. Also added after the terms "primary care physician/certified nurse practitioner/certified nurse practitioner" are the abbreviations "(PCP/CNP/CNS)". Please see Comment 38 for explanation.

9. In the definition of "primary care physician," the last sentence was amended to read: "In general, the primary care physician/certified nurse practitioner/certified nurse specialist are those individuals dedicated to the practice of general or family practice, pediatrics, internal medicine, and sometimes obstetrics/gynecology." (See also item 8 above and the response to Comment 38.)

10. The DMAHS also added the following definition: "CNP/CNS or Certified Nurse Practitioner/Clinical Nurse Specialist means a person licensed to practice as a registered professional nurse who is certified by the New Jersey State Board of Nursing in accordance with N.J.A.C. 13:37-7, or similarly licensed and certified by a comparable agency of the state in which he/she practices." (Please see Comment 38.)

11. The DMAHS also added the definition of "certified nurse midwife": "Certified nurse-midwife (CNM) means a registered professional nurse licensed in New Jersey who, by virtue of added knowledge and skill gained through an organized program of study and clinical experience, receives certification by the American College of Nurse-Midwives. A CNM shall be licensed by and registered with the New Jersey Board of Medical Examiners." Please see Comment 38.

12. The definition of "referral services" has been amended to read: "means those health care services rendered by a health professional other than the primary care physician/CNP/CNS . . ." (Please see items 10 and 11 above.)

13. The definition of "urgent care" has been amended to read: "means treatment . . . for which his or her physician/CNP/CNS . . ." (See Comment 38.)

14. The definition for "risk comprehensive contract" has been amended to reference 42 CFR 434.21.

This change has been made to be consistent with N.J.A.C. 10:74-3.1(a) as amended. See item 16 below.

N.J.A.C. 10:74-2 Criteria for Contracting with the Department

15. In N.J.A.C. 10:74-2.1(a)4, the word "disability" was included after "provide services without reference to." The use of this word complies with a Department Administrative Order and the Americans with Disabilities Act.

N.J.A.C. 10:74-3 Benefits

16. N.J.A.C. 10:74-3.1(a) was amended, consistent with the definition of Risk Comprehensive Contract. See item 14 above. Both definitions now reference Federal Regulation (42 CFR 434.21).

17. N.J.A.C. 10:74-3.1(d)1 has been amended to read, "Primary care services, which shall include all physician services, primary and specialty; in accordance with State certification/licensure requirements, standards and practices, such services may also include certified nurse midwives (CNMs), certified nurse practitioners (CNPs), clinical nurse specialists (CNSs) and physician assistants (PAs).

"Services rendered at independent clinics come under the management purview of the HMO." The term HMO is contained in the definition section and is more accurate. (Please see Comment 44.)

18. N.J.A.C. 10:74-3.1(d) has been internally recodified since, as presented in the proposal, the format is confusing.

19. N.J.A.C. 10:74-3.1(d)3 has been amended to read: "Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program services including non-legend drugs, ventilator services in the home and private duty nursing when indicated as a result of EPSDT screening." Federal law requires that these services be provided to children under EPSDT.

20. N.J.A.C. 10:74-3.1(d)11 has been amended to read: Outpatient Rehabilitation Services—60 days per therapy per contract year. The addition of the word "outpatient" was for the purpose of clarity. The use of the word "visits" instead of "days" was a clerical error.

21. N.J.A.C. 10:74-3.1(d)12 has been amended to read "Podiatrist services." This change makes the section more correct and specifically defines the service for the interested industries.

22. N.J.A.C. 10:74-3.1(d)13 has been amended to read "Chiropractor services". Please see the reason given in 21 above.

23. N.J.A.C. 10:74-3.1(d)14 has been amended to read "Optometrist services". Please see the reason given in 21 above.

24. N.J.A.C. 10:74-3.1(d)16 has been amended to read: Hearing aid services, not "Hearing aid", because hearing aid services are not limited only to the provision of hearing aids.

25. N.J.A.C. 10:74-3.1(d)22 has been amended to read: "Organ transplants, excluding donor and [beneficiary] **recipient** inpatient hospital costs." This is more medically accurate and in keeping with contract language.

26. N.J.A.C. 10:74-3.1(e) has been amended to include:

1. Personal Care Assistant Services
2. Medical Day Care
3. Elective/induced abortions
4. Transportation-lower mode ("Livery" has been deleted in favor of the more accurate terminology.)
5. Organ transplants—Donor and recipient inpatient hospital costs.
6. Rehabilitation services in excess of 60 day limits per therapy per contract year.

This section was amended for clarification. In addition, behavioral health services were incorrectly included in this subsection and have been deleted in this adoption. Please see item 27 above and Comment 52.

Rehabilitation services were inadvertently omitted from this subsection. DMAHS has added rehabilitation services to this section to clarify how these services are provided to Medicaid beneficiaries after the HMO contract limits have been reached, consistent with the definition in this chapter for "out of plan services."

27. N.J.A.C. 10:74-3.1(g) has been recodified and three services added, as follows:

6. Mental health services;
7. Substance abuse services;
i. Diagnosis;
ii. Treatment; and
iii. Detoxification; and
8. Costs for methadone and its administration.

As a result of a clerical error, the behavioral health services were listed in the proposal at N.J.A.C. 10:74-3.1(e) rather than N.J.A.C. 10:74-3.1(g). Please see Comment 52.

28. N.J.A.C. 10:74-3.3(a)2 now reads "a hospital inpatient and outpatient department, . . .". Inpatient services are covered, as shown throughout the chapter's references to inpatient as a covered service. Inpatient hospital services do include rehabilitation, as described in N.J.A.C. 10:52 and it was inadvertently omitted from the list.

29. N.J.A.C. 10:74-3.4(a), was amended to delete "but shall be reported on an encounter." (Please see Comment 80.)

30. N.J.A.C. 10:74-3.4(a)3 has been amended to read: Rest Cures (Deleted "and custodial or domiciliary care"). This is obsolete language which the agency no longer uses.

31. The text under N.J.A.C. 10:74-3.4(a)6 has been deleted, because this text is in error, as not general Medicaid exclusions.

32. At N.J.A.C. 10:74-3.4(a)6, Infertility treatment services, has been added because these are excluded services per the Department's adopted rule at 26 NJR 4762(a).

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N.J.A.C. 10:74-5 Information Provided to Enrollees

33. N.J.A.C. 10:74-5.1(a). The phrase "or prepaid health plan" has been deleted. The Department does not contract with prepaid health plans, although the provision for doing so was in N.J.A.C. 10:49-19.

34. N.J.A.C. 10:74-5.1(b)3 has been amended to read: "Specific written details on benefits, limitation, exclusions, and availability and location of services and facilities. Thereafter, such notification shall be provided whenever there are significant changes in the services provided or the locations where they can be obtained, or other changes in program nature but not less than annually." Special notices will go out only when there are significant changes. Other changes will go out annually. This has been rewritten for clarity only and contains the same information.

35. At N.J.A.C. 10:74-5.1(b)4, CNP/CNS has been added after each "primary care physician". Please see number 10. (Primary care physician is used twice in this section.)

36. N.J.A.C. 10:74-5.1(c) has been amended to read: "Such information shall be provided to each enrolled family household at least 10 days prior to such change." The general language regarding information is already codified at paragraph (b)3.

N.J.A.C. 10:74-6 Enrollment

37. N.J.A.C. 10:74-6. DMAHS has changed the heading of this subchapter to "General Enrollment," for clarification purposes.

N.J.A.C. 10:74-7 Disenrollment and Transfer

38. N.J.A.C. 10:74-7.1. DMAHS changed the heading of this subchapter to "Disenrollment" for clarification purposes.

39. N.J.A.C. 10:74-7.1(a) has been amended to read: "Disenrollment shall occur": (Delete "The contractor shall disenroll Managed Health Care enrollees:"). This was done for clarity, since disenrollment can be initiated in a number of ways, and may be initiated by client, by DMAHS, or the contractor.

40. N.J.A.C. 10:74-7.2(b). This section should read: "After this first 30 day period and for the next five months, the enrollee may elect to disenroll, with cause. Good cause must be determined on a case-by-case basis, upon notification to the HBC. Good cause reasons may include, but are not limited to, failure of the contractor to provide services to the enrollee . . .". This was changed to be consistent with the process described in N.J.A.C. 10:74-7.1(a), and to allow Division assessment of individual situations.

41. N.J.A.C. 10:74-7.2(b). DMAHS has added CNP/CNS after "PCP." Please see Comment 38.

N.J.A.C. 10:74-8 Enrollment

42. DMAHS changed the heading of this subchapter to "Enrollees" for clarity, since the rules deal with enrollee requirements.

43. N.J.A.C. 10:74-8.2(a)3 has been amended to read "Individuals who are . . . or residential treatment facility". This is in response to a Comment and has a more specific meaning, since it is a specialized treatment facility.

44. N.J.A.C. 10:74-8.4(a)4. DMAHS added CNP/CNS after "primary care physician." (See Comment 38.)

45. N.J.A.C. 10:74-8.6(a). The first sentence has been deleted and "The HMO shall issue an identification card to the beneficiary indicating the effective enrollment date in the HMO." has been added, since the HMO card may be used for all providers, not just Medicaid providers, and the use of the card is dictated by individual HMO policies and procedures.

46. N.J.A.C. 10:74-8.6(b). DMAHS added CNP/CNS after "primary care physician (PCP)". Please see Comment 38.

47. At N.J.A.C. 10:74-8.6(c), DMAHS added CNP/CNS after "PCP." (Please see Comment 38.)

48. N.J.A.C. 10:74-8.7. This entire section has been removed. It repeats what is stated elsewhere in the rules in various sections and adds no additional information.

N.J.A.C. 10:74-9 Emergency Services

49. N.J.A.C. 10:74-9.1 has been amended to read: The contractor shall, on a 24-hour-a-day, seven-day-a-week basis, make available emergency services, that is those services, within or outside of the contractor's enrollment area, required to be provided to an enrollee as a result of an injury or the sudden onset of a serious illness having the potential of causing immediate disability or death, or requiring the immediate alleviation of severe pain, or the time required to reach the contractor's facilities or the facilities of a provider with which the contractor has arrangements, would have meant risk of permanent damage to the recipient's health. This is consistent with the change in the definition of Emergency services.

50. N.J.A.C. 10:74-9.1(a)1 and 2 have been deleted, (b) retained, and (c) ends at "HMO." This is consistent with the change in the definition of Emergency services, as described in 6 above.

N.J.A.C. 10:74-12 Reimbursement

51. N.J.A.C. 10:74-12.3(c)5 has been amended to add the phrase "actuarially estimated" to the end of the sentence after "are made to reflect." This phrase serves to further define and clarify the used to arrive at the reimbursement factors listed in (c)5.

52. N.J.A.C. 10:74-12.7 has been amended to read: "For Medicaid covered services provided to an enrollee by the contractor or other Medicaid participating provider in excess of the stated limits set forth at N.J.A.C. 10:74-3.1, the participating provider will be reimbursed by DMAHS according to the Medicaid fee schedule, provided that the participating provider has received a letter from the contractor saying that the stated limits have been exhausted." The process remains the same. The document referenced is a letter which serves as an explanation of benefits limitations and is referred to as an explanation of benefits (EOB). Eliminating the use of the term EOB, and using the entire phase in its place, is more clear and accurate.

53. N.J.A.C. 10:74-12.8(c) has been amended to read: "The mother's plan is responsible for the hospital stay and subsequent services for the newborn following delivery." The last sentence, "The plan of record for the child is responsible for subsequent services based on enrollment in the plan.", has been deleted. This clarifies the newborn services and highlights the protection for the mother and child for any continuing post natal care, as described in the first sentence of subsection (c).

N.J.A.C. 10:74-13

54. N.J.A.C. 10:74-13.1(e) has been deleted. While a part of the rules at N.J.A.C. 10:49-19, repealed, this is no longer a reporting requirement. Based on other data requirements, this information is no longer necessary.

Executive Order No. 27 Analysis

The purpose of this Executive Order No. 27 Analysis is to relate to those changes that are being made between proposal and adoption.

In general, a statement would be sufficient because the rules contain standards which are the same as Federal standards.

However, there is one issue that the agency believes requires an analysis, and that is the addition of certified nurse practitioners as primary case providers under the HMO.

Federal law allows certified nurse practitioners and clinical nurse specialists to practice in an HMO setting within the scope of the HMO licensure. Upon adoption, these rules will be consistent with Federal and State statute by allowing certified nurse practitioners to provide services under the auspices of an HMO.

Full text of the adoption follows:

CHAPTER 74
MANAGED HEALTH CARE SERVICES
FOR MEDICAID ELIGIBLES

SUBCHAPTER 1. GENERAL PROVISIONS

10:74-1.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"AFDC" means Aid to Families with Dependent Children, a cash assistance program administered by the counties, supervised by the State in accordance with Federal requirements and administered with State and Federal funds.

"AFDC-related" refers to pregnant women and children who are enrolled in the New Jersey Care . . . Special Medicaid programs.

"Automatic assignment" means the enrollment of an eligible person, for whom enrollment is mandatory, in a managed care plan chosen by the New Jersey Department of Human Services when the persons fails to make a personal choice.

"Benefit package" means the services which the contractor has agreed to provide, arranged for, and be held fiscally responsible for, which are set forth in N.J.A.C. 10:74 *[Appendix A]* **3.1, Scope of benefits***.

"Bilingual" means, at a minimum, English and Spanish plus any other language which is spoken by 10 percent or more of the enrolled Medicaid population in the contractor's plans.*

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"Capitation rate" means the fixed monthly amount that the contractor is paid by the Department for each enrollee to provide that enrollee with the services included in the Benefit Package described in *[Appendix A of this chapter]* ***N.J.A.C. 10:74-3.1***.

"Certificate of authority" means the granting of authority by the New Jersey Departments of Insurance and Health to operate an HMO in New Jersey in compliance with N.J.S.A. 26:2J3 and 4 and N.J.A.C. 8:38-1.

Certified nurse-midwife (CNM)" means a registered professional nurse licensed in New Jersey who, by virtue of added knowledge and skill gained through an organized program of study and clinical experience, receives certification by the American College of Nurse-Midwives. A CNM shall be licensed by and registered with the New Jersey Board of Medical Examiners.

Certified nurse practitioner/clinical nurse specialist (CNP/CNS)" means a person licensed to practice as a registered professional nurse who is certified by the New Jersey State Board of Nursing in accordance with N.J.A.C. 13:37-7, or similarly licensed and certified by a comparable agency of the state in which he or she practices.

"Commissioner" means the Commissioner of the Department of Human Services or a duly authorized representative.

"Contractor" means a health maintenance organization as defined herein which contracts with the Department for the provision of comprehensive health services to Medicaid enrollees on a prepayment basis.

"Cultural competence" means acceptance of, and respect for, cultural differences, sensitivity to how these differences influence relationships with patients/clients and the ability to devise strategies to better meet culturally diverse patients' needs.

"CWA" means county welfare agency, that agency of county government which is charged with the responsibility for determining eligibility for certain public assistance programs.

"Department" means the Department of Human Services.

"Director" means the Director of the Division of Medical Assistance and Health Services or a duly authorized representative.

"Disenrollment" means the process of removal of an enrollee from the contractor's plan, not from the Medicaid Program.

"Division" means the Division of Medical Assistance and Health Services of the Department (DMAHS).

"Division of Youth and Family Services" (DYFS) means the component of the New Jersey Department of Human Services which provides comprehensive social services for children, families and adults. DYFS beneficiaries who are eligible for Medicaid are financially eligible children in foster care ***or other State supported placements*** who are under the supervision of DYFS, and children who have been placed in private adoption agencies until they are legally adopted or in subsidized adoptions.

"Effective date of enrollment" means the date on which a person can begin to receive services under the contractor's plan.

"Emergency services" means those services *[required to treat a life-threatening or organ-threatening condition or potentially life or organ-threatening condition of such immediate nature that any unusual delay in treatment would be dangerous to the health or well-being of the enrollee.]* ***within or outside of the contractor's enrollment area, required to be provided to an enrollee as a result of an injury or the sudden onset of a serious illness having the potential of causing immediate disability or death, or requiring the immediate alleviation of severe pain, or the time required to reach the contractor's facilities or the facilities or a provider with which the contractor has arrangements, would have meant risk of permanent damage to the recipient's health.***

"Enrollee" or "enrolled beneficiary" means an individual residing within the defined service area, who elects or has had elected on his or her behalf by an authorized person, in writing, to participate in the specific contractor's plan, whether through the mandatory managed care coverage or on an individual, voluntary basis, and who meets specific Medicaid eligibility requirements for Plan enrollment agreed to by the Department and the contractor, at N.J.A.C. 10:74-6.

"Enrollment" for the voluntary program means the process by which certain Medicaid eligible individuals voluntarily enroll in an HMO for the provision of health services and by which such application is approved.

"Enrollment" for the mandatory managed health care program means the process whereby specified Medicaid beneficiaries are required to join an HMO to receive the health services unless otherwise exempted or excluded.

"Enrollment area" is established by county boundaries, within which the HMO limits its enrollment, in accordance with its contract with the Department.

"EPSDT" means Early and Periodic Screening, Diagnosis and Treatment Program mandated by Title XIX of the Social Security Act.

"Excluded services" means services covered under the fee-for-service Medicaid program that are not included in the benefit package.

"Federally approved HMO" means an entity that has been granted a Certificate of Authority to operate in a specific service area as a Health Maintenance Organization in New Jersey, based upon Section 1903(m)(6) of the Social Security Act.

"Federally qualified HMO" means an HMO that has been determined by the Public Health Service (PHS) to be a qualified HMO under section 1310(d) of the PHS Act.

"Garden State Health Plan", or "GSHP" means the non-profit HMO operated by the State of New Jersey through the New Jersey Division of Medical Assistance and Health Services, in accordance with N.J.A.C. 10:49-20.

"Health benefits coordinator" (HBC) means an entity under contract with the Department whose primary responsibility is to assist Medicaid-eligible enrollees in the selection of and enrollment in a managed care plan.

"Health education services" means instruction to beneficiaries about obtaining the health care they need within an HMO, to medical providers about providing appropriate care within the HMO structure, and to community organizations for assisting their beneficiaries to achieve better health outcomes.

"Health maintenance organization" (HMO) means a public or private organization, organized under State law which:

1. Is a Federally qualified or Federally approved HMO (defined above); or

2. Meets the Division's definition of an HMO which includes, at a minimum, the following requirements:

i. Is organized primarily for the purpose of providing access to health services;

ii. Makes the services it provides to its Medicaid enrollees as accessible to them (in terms of timeliness, amount, duration, and scope) as those services are to non-enrolled Medicaid eligible individuals within the area served by the HMO;

iii. Makes provision against the risk of insolvency, and assures that Medicaid enrollees will not be liable for the HMO's debts if it does become insolvent; and

iv. Has a Certificate of Authority as defined in Subchapter 1, granted by the State of New Jersey to operate in all or selected counties of New Jersey.

"HHS" or "DHHS" means the United States Department of Health and Human Services.

"IPN" means Independent Practitioner Network, which is a type of network used in an HMO operation. Services are provided for enrollees in the individual offices of the contracting physician case managers (PCMs).

"Lock-in" period means, for a Federally qualified HMO, the period beginning 30 days after the effective date of enrollment in the contractor's plan and ending five months thereafter.

"Market area" See "Service Area."

"Marketing" means any presentation by, or on behalf of, an HMO for enrollment purposes.

"Medicaid" refers to the program funded under Title XIX of the Social Security Act, administered by the Department, to provide covered health care services to eligible beneficiaries.

"Medicaid beneficiary" means an individual eligible to receive services under the New Jersey Medicaid program in accordance with N.J.A.C. 10:49-2.

"Network", within the context of managed care, refers to "Provider Network" as described below.

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"Out-of-area services" means all services covered under the Contractor's benefit package included under the terms of the Medicaid contract which are provided to enrollees outside the defined service area.

"Out-of-Plan Services" means Medicaid-covered services which have not been included in the contractor's benefits package. These services are provided to Medicaid beneficiaries who have enrolled in an HMO through the fee-for-service Medicaid coverage.

"Non-covered Medicaid services" means all services not covered under the New Jersey State Plan for the Medicaid program.

"Non-Participating Provider" means a provider with which the Contractor has no Provider Agreement.

["PCM" means physician case manager who is the primary care physician.]

"Plan" means all services and responsibilities undertaken by the contractor pursuant to N.J.A.C. 10:74, the Managed Health Care Manual.

"Primary care physician***/certified nurse practitioner/clinical nurse specialist PCP/CNP/CNS****" means a licensed physician MD***,*** *[or]* DO***, or CNP/CNS*** who has the responsibility for providing all required primary care services to enrollees, including periodic examinations, immunizations, diagnosis and treatment of illness or injury, for coordinating overall medical care and record maintenance, for initiating all referrals to specialty providers described in the Benefit Package, and for maintaining continuity of patient care. In general, the primary care physician *[is a general or family practitioner, internist, pediatrician or obstetrician/gynecologist]* ***/CNP/CNS are those individuals dedicated to the practice of general or family practice, pediatrics, internal medicine, and sometimes obstetrics/gynecology***.

"Provider Network", within the context of managed care, means the servicing providers with whom an HMO has entered into a written agreement to perform a specified part of the HMO's obligations. These obligations are for the provision of professional medical services or goods and ensuring coverage of all required services included in the benefits package. The provider network will include primary care and specialty physicians, other health care professionals and entitites, hospitals, laboratories, and medical suppliers.

"Referral services" means those health care services rendered by a health professional other than the primary care physician***/CNP/CNS***, and who are approved by the primary care physician or by the contractor.

"Risk" or "underwriting risk" means the possibility that a contractor may incur a loss because the cost of providing services may exceed the payments made by the agency to the contractor for services covered under the contract.

"Risk comprehensive contract" means a risk contract *[for furnishing comprehensive services, such as inpatient hospital services, and any three of the following services or groups of services:

1. Outpatient hospital services;
2. Other laboratory and diagnostic and therapeutic radiologic services;
3. Covered long-term care services provided in nursing facility; EPSDT services, and family planning services;
4. Physician services; and
5. Home health services.]* ***as defined at 42 CFR 434.21, incorporated herein by reference.***

"Routine care" means treatment of a condition which would have no adverse effects if not treated within 24 hours, or could be treated in a less acute setting, for example, a physician's office, or by the patient himself.

"Secretary" means the Secretary of the United States Department of Health and Human Services.

"Service area" means the geographic area in which the contractor is obligated to provide covered services for its Medicaid enrollees under its contract.

"Special Medicaid programs" means programs for:

1. AFDC families who have income above the 50 percent Federal poverty level standard, and
2. Aged, blind and disabled individuals who receive SSI, and whose income or resources exceed the standard.

"SSI" means Supplemental Security Income, which provides cash assistance and full Medicaid benefits for individuals who meet the definition of aged, blind, or disabled, and who meet the SSI financial needs criteria.

"Staff model" means a type of HMO operation in which HMO employees are responsible for both administrative and medical functions of the plan. Health professionals, including physicians, are reimbursed on a salary or fee-for-service basis. These employees are subject to all policies and procedures of the HMO. In addition, the HMO may contract with external entities to supplement its own staff resources.

"Standard service package" means the list of services, and any limitations thereto, which are required to be provided by managed health care providers to Medicaid beneficiaries.

"Subcontract" means any written agreement between the contractor and a third party to perform a specified part of the contractor's obligations under the contract.

"Subcontractor" means any third party who has a written agreement with the contractor to perform a specified part of the contractor's obligations, and is subject to the same terms, rights, and duties as the contractor.

"Target population" means the population from which the initial number of enrollees, not to exceed any limit specified in the contract, will be drawn; that is, individuals eligible for Medicaid residing within the stated market area and belonging to one of the categories of eligibility for Medicaid to be covered under the contract.

"Termination" means the loss of Medicaid eligibility and therefore automatic disenrollment of the recipient from the HMO.

"Third Party Liability" (TPL) means another party or entity, such as an insurance company, which is, or may be, responsible to pay for all or a part of the health care costs of a Medicaid beneficiary.

"Urgent care" means treatment of a condition that is potentially harmful to a patient's health and for which his or her physician***/CNP/CNS*** has determined it is medically necessary for the patient to receive medical treatment within 12 hours to prevent deterioration.

SUBCHAPTER 2. CRITERIA FOR CONTRACTING WITH THE DEPARTMENT

10:74-2.1 Contract requirements

(a) The contractor shall:

1. Comply with the requirements of the New Jersey Certificate of Authority (P.L. 1973, c.337, N.J.S.A. 26:2J-1 et seq.) statutes and rules;
2. Provide to the Division of Medical Assistance and Health Services, Department of Human Services, a copy of the Department of Health approved Certificate of Authority and application document on request;
3. Furnish the Department with data, information and reports and maintain records as required by the Department and other State or Federal agencies. Such reports shall include, but are not limited to, enrollment data, quality control, and quality assurance, utilization review and financial statements, and service utilization;
4. Enroll individuals and provide services without reference to race, sex, age, religion, creed, color, national origin, ancestry***, disability,*** or on the basis of health status or need for health services, other than those services specifically excluded from coverage as defined in the standard service package;
5. Assure that the provider network used for private, commercial business be equally available to Medicaid enrollees. Such provider network shall consist of hospitals, physicians, laboratories and all other providers of services covered under the contract;
6. Instruct medical providers regarding HMO health services in respect to:
   i. Appropriate medical procedures and treatment;
   ii. Delivery of culturally competent care;
   iii. Advances in medical science; and
   iv. Responsibility to notify beneficiaries when they are due to receive certain periodic services, for example, antenatal visits for pregnant women, and EPSDT examinations for children;
7. Have a contract which has been approved by the Health Care Financing Administration (HCFA) and the New Jersey Departments of Health and Insurance;
8. Have the organizational and administrative capabilities to carry out its duties and responsibilities. This shall include at a minimum, the following:

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i. A full time administrator to manage day-to-day business activities of the contractor and to be the responsible contract officer. (This does not require a full time administrator to be dedicated solely to the Medicaid contract.);

ii. Data reporting capabilities sufficient to provide necessary reports and data as specified in the contract between the HMO and Department, and to assure orderly and timely flow of information to the Department. Such reports shall include, but are not limited to, enrollment data, quality control, and quality assurance, utilization review and financial statements, and service utilization;

iii. Financial records and books of accounts maintained in accordance with generally accepted accounting principles which are sufficient to disclose fully the disposition of all program funds received; and

iv. An annual independent audit arranged for by the contractor and performed by a certified public accountant;

9. Advise the Department of its administrative organization and changes thereto, which shall include the functions and responsibilities of each principal, an organizational chart and a list of all personnel and providers used either directly by the contractor or through subcontractual arrangements. For each principal and each provider not previously reported, the following information shall be included:

i. Full name;

ii. Business address;

iii. Social Security number;

iv. IRS employer number;

v. Professional license number (when applicable); and

vi. Medical specialty (when applicable);

10. Comply with eligibility requirements of the program, which include, but are not limited to, enrolling only individuals who are covered under specified Medicaid categories of assistance and who reside in the agreed upon market area;

11. Identify and provide financial disclosure of subcontractors with whom it has had business transactions in excess of $25,000 per year, and any significant business transactions with such subcontractors. Transactions that shall be reported include:

i. Any sale, exchange or leasing of property;

ii. Any furnishing for consideration of goods, services, or facilities (but not employee salaries); and

iii. Any loans or extensions of credit;

12. When specifically requested, make available in the form of a consolidated financial statement, any information reported to the State, to the following:

i. The Secretary of the U.S. Department of Health and Human Services,

ii. The Office of the Inspector General,

iii. The Comptroller General, and

iv. The enrollees of the HMO;

13. Disclose to the Division the identity of each person with a controlling interest and of any person(s) having ownership of five percent or more; and

14. Not employ or contract with:

i. Any individual or entity excluded from Medicaid participation under Sections 1128 or 1128A of the Social Security Act or under N.J.A.C. 10:49-11 for the provision of health care, utilization review, medical social work, or administrative services; or

ii. Any entity for the provision of such services (directly or indirectly) through an excluded individual or entity;

15. Establish and implement policies and procedures for identifying, investigating, and taking corrective action against fraud and abuse on the provision of health services.

(b) The contractor shall also comply with 42 CFR 434 and 42 CFR 110, as amended and supplemented.

SUBCHAPTER 3. BENEFITS

10:74-3.1 Scope of benefits

(a) *[Federal regulations define risk comprehensive contracts as risk contracts for furnishing comprehensive services, which shall include inpatient hospital services and any of the following services, or any three or more of the following services or groups of services (See 42 CFR 434.21):

i. Outpatient hospital and rural health clinic services;

ii. Other laboratory and x-ray services;

iii. Nursing facility services, early and periodic screening, diagnosis and treatment (EPSDT), and family planning;

iv. Physicians' services;

v. Home health services.]* ***The definition of risk comprehensive contracts found at 42 CFR 434.21 is incorporated herein by reference.***

(b) Under the risk contract, all HMO/managed health care contractors shall provide a standard service package, which shall exactly equal the services included in the New Jersey Medicaid program in amount, duration, and scope of services.

(c) The standard service package shall be provided in accordance with medical necessity without any predetermined limits, unless specifically stated; service utilization shall be controlled by the HMO through pre-certification programs and prior authorization for medical necessity.

(d) Health services provided to HMO enrollees through the standard service package *[shall]* include *[the following]*:

1. Primary care services, which shall include all physician services, primary and specialty, in accordance with State certification/licensure requirements, standards and practices; such services may also include certified nurse midwives ***(CNM), certified*** nurse practitioners ***(CNP), clinical nurse specialist (CNS)***, and physician assistants ***(PA)***.

Services rendered at independent clinics come under the management purview of the *[managed care provider]* ***HMO***;

2. Preventive health care and counseling*[, which shall include]*:

*[i.]****3.*** Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program services including ***non-legend drugs, ventilator services in the home and*** private duty nursing when indicated as a result of EPSDT screening;

*[3.]****4.*** Emergency medical care 24 hours a day, seven days a week;

*[4.]****5.*** Inpatient hospital services;

*[5.]****6.*** Outpatient hospital services;

*[6.]****7.*** Laboratory services;

*[7.]****8.*** Radiology services, diagnostic and therapeutic;

*[8.]****9.*** Prescription drugs:

i. Legend

ii. Non-legend drugs covered by the NJ Medicaid program;

*[9.]****10.*** Family Planning services (excluding elective/induced abortions);

*[10. Rehabilitation]****11. Outpatient rehabilitation*** services—60 *[visits]* ***days*** per therapy per contract year:

i. Physical therapy;

ii. Occupational therapy;

iii. Audiology services; and

iv. Speech/language therapy;

*[11. Podiatry]****12. Podiatrist*** services;

*[12. Chiropractic]****13. Chiropractor*** services;

*[13. Optometry]****14. Optometrist*** services;

*[14.]****15.*** Optical appliances;

*[15.]****16.*** Hearing [*Aids]* ***Aid services***;

*[16.]****17.*** Home Health Services;

*[17.]****18.*** Hospice services;

*[18.]****19.*** Medical supplies;

*[19.]****20.*** Durable medical equipment;

*[20.]****21.*** Dental services;

*[21.]****22.*** Organ transplants, excluding donor and *[beneficiary]* ***recipient*** inpatient hospital costs;

*[22.]****23.*** Transportation services, including ambulance, MICUs, and invalid coach only; and

*[23.]****24.*** Prosthetics and orthotics.

(e) The remaining services provided by the New Jersey Medicaid program under its State Plan shall remain in the fee-for-service program but shall be case managed by the managed care provider, including:

1. Personal *[care]* ***care assistant*** services;

*[2. Mental health services;

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3. Substance abuse services:
i. Diagnosis;
ii. Treatment; and
iii. Detoxification;
2. Costs for methadone and its administration;]*
*[3.]**2.* Medical *[day care]* ***Day Care***;
[4.]***3.*** Elective/induced abortions;
*[5.]**4.* Transportation—*[livery]* ***lower mode***; *[and]*
*[6.]**5.* Organ transplants—Donor and *[beneficiary]* ***recipient*** inpatient hospital costs*[.]**; **and***
6. Rehabilitation services in excess of 60 day limits per therapy per contract year.
(f) Any other service, activity, or product not covered under these rules shall be provided by a managed care provider only with the prior written approval of the Department and at the cost of the managed care provider.
(g) The following services shall remain in the fee-for-service program without requiring case management by the managed care provider:
*[i.]**1.* Nursing facility care;
*[ii.]**2.* Residential treatment center care;
*[iii.]**3.* Psychiatric hospital;
*[iv.]**4.* ICF/MR; *[and]*
*[v.]**5.* Waiver and demonstration program services*[.]**;*
6. Mental health services;
7. Substance abuse services;
i. Diagnosis;
ii. Treatment; and
iii. Detoxification; and
8. Costs for methadone and its administration.
(h) Beneficiaries participating in a waiver or demonstration program or admitted for long term care treatment in one of the facilities listed in (g) above shall be disenrolled from the managed care entity ***effective*** on the date of admission to institutionalized care.
(i) An enrollee may obtain family planning services from either the contractor's family planning provider network or from any other qualified Medicaid family planning provider.
(j) In accordance with this chapter, the Division shall provide to Medicaid HMO-enrollees all Medicaid benefits which are not covered by the HMO.

10:74-3.2 Responsibilities of the contractor
(a) The contractor shall make available emergency services, as defined in N.J.A.C. 10:74-1, on a 24-hour-a-day, seven-day-a-week basis.
(b) The contractor shall offer health education services as an integral part of its health care delivery system to its enrollees in order to assure appropriate use of health services and to promote the maintenance of health, including, but not limited to, instruction to beneficiaries regarding:
i. Their rights and responsibilities as members of managed care organizations; and
ii. Appropriate measures to achieve/maintain wellness or prevent illness;
(c) The contractor shall provide EPSDT-equivalent services for all Medicaid enrollees under 21 years of age, in accordance with the protocols approved by the Division.
1. Initial and periodic physical examinations shall be provided. All further treatments indicated shall be provided in an appropriate and timely manner and shall be appropriately documented as specified by EPSDT requirements. The above shall be in accordance with EPSDT regulations as specified at 42 U.S.C. 1396d(r) and N.J.A.C. 10:49-1.3.
i. The Division shall monitor the EPSDT equivalent services through periodic audits.
(d) The contractor shall provide or arrange to have provided all covered necessary health services in a manner that is prompt, appropriate, and of a quality that conforms to generally acceptable professional standards as set forth in the Federal Social Security Act, 42 U.S.C. 1302 et seq., and all other applicable Federal and State laws.

10:74-3.3 General Medicaid program limitations
(a) The following service requirements and limitations shall apply in the standard service package or capitation payments, even if provided by the HMO:
1. Although services of podiatrists shall be provided, New Jersey Medicaid does not ordinarily cover routine foot care or treatment of flat foot conditions. These services shall be provided only when medical necessity is determined.
2. Physical therapy, occupational therapy, and treatment for speech, language or hearing disorders shall be covered only when provided to an enrollee by a nursing facility, an approved home health agency, a hospital ***inpatient and*** outpatient department, an independent outpatient clinic, or at the contractor's facilities.
3. Services provided by private practice physical therapists shall not be eligible for payment under the capitation rate unless:
i. The physical therapist holds a current license to practice in New Jersey; and
ii. The physical therapist is under contract with the contractor and will abide by the provisions of the contract.
4. Elective/induced abortions are not covered under an HMO program but will continue to be paid on a fee-for-service basis by the Medicaid program.

10:74-3.4 General Medicaid program exclusions
(a) The following shall not be considered covered services in the capitation rate, *[but shall be reported on an encounter,]* if provided:
1. All claims arising directly or indirectly from services provided by or in institutions owned or operated by the Federal government;
2. Elective cosmetic surgery;
3. Rest cures *[and custodial or domiciliary care]*;
4. Personal comfort and convenience items; services and supplies not directly related to the care of the patient, including, but not limited to, guest meals and accommodations, telephone charges, travel expenses other than those services which may be specifically covered under the standard benefits package (such as ambulance services), take-home supplies and similar costs;
5. Services involving the use of equipment in facilities, the purchase, rental or construction of which has not been approved by applicable laws of the State of New Jersey and regulations issued pursuant thereto;
6. *[All services included in the standard benefit package which are not provided, approved, or arranged by the HMO physician except emergency services as defined in N.J.A.C. 10:74-1 and under the conditions specified in N.J.A.C. 10:74-9;]* ***infertility treatment services;***
7. Services provided in an inpatient psychiatric institution that is not an acute care hospital to individuals under 65 years of age and over 21 years of age; and
8. Private duty nursing in an institution or hospital setting and private duty nursing provided in any setting for individuals 21 years of age or older.

10:74-3.5 Reporting of services
All services listed in N.J.A.C. 10:74-3.3 and 3.4 shall be reported on encounters, despite the limitations or exclusions.

10:74-3.6 Availability of services
(a) Each contractor shall demonstrate the availability and accessibility of institutional facilities and professional, allied and supporting paramedical personnel to perform the agreed-upon services.
(b) Each contractor shall ensure that no distinctions will be made with regard to quality of service or availability of covered benefits between Medicaid enrollees under this subchapter and any other parties served by the contractor.
(c) Each Medicaid enrollee shall be given the choice of a primary care physician who will supervise and coordinate his or her care.
(d) Generally, the contractor shall have only one service area for all Medicaid parties served, including those served under these regulations. Modifications of such service area for purposes of contracting under this subchapter shall be achieved by means of contract amendment.

SUBCHAPTER 4. MARKETING

10:74-4.1 Marketing
(a) The contractor shall obtain written approval from the Division prior to the commencement of marketing activities, regarding the form and content of the following:

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i. Informational and instructional materials to be distributed to inform Medicaid enrollees of the scope and nature of benefits provided by the contractor;

ii. Informational and instructional materials to be distributed to inform Medicaid enrollees of changes in program scope or administration;

iii. Public information releases pertaining to the enrollment of Medicaid individuals in the contractor's plan; and

iv. Instruction to community-based organizations that will empower them to provide instruction to their beneficiaries to achieve better health outcomes.

(b) The contractor shall ensure that:

1. All of the contractor's marketing presentations accurately and clearly represent the benefits and limitations of the contractor's plan, and are not false or misleading in any way;

2. All of the contractor's marketing representatives and agents have received sufficient instructions and training to be capable of performing such marketing activities;

3. All of the contractor's marketing representatives represent themselves as agents of the contractor involved in marketing;

4. All marketing presentations make clear whether a specific HMO enrollment is voluntary or mandatory; those individuals for whom managed care is mandatory may choose an HMO from those available in their county of residence; and

5. None of the contractor's marketing representatives offer or give any form of compensation or reward as an inducement to a Medicaid beneficiary to enroll in the contractor's plan. However, for marketing purposes, the HMO may offer promotional giveaways that shall not exceed a combined total of $10.00 to any one individual.

SUBCHAPTER 5. INFORMATION PROVIDED TO ENROLLEES

10:74-5.1 Information to be provided to enrollees by the contractor

(a) At such time as a Medicaid beneficiary signs an enrollment application of an HMO *[or prepaid health plan]*, the contractor shall inform the beneficiary that:

1. There is normally a minimum 30 to 45-day processing period between the date of application and the effective date of enrollment;

2. During this interim period, the Medicaid enrollee may continue to receive health services under his or her current arrangement as long as he or she retains Medicaid eligibility; and

3. Subject to the termination of Medicaid eligibility, the disenrollment rules in N.J.A.C. 10:74-7 below and the termination provisions in the contract between the contractor and the Department, the initial enrollment period shall extend for six months.

(b) Prior to, but not later than, the effective date of coverage, or as specified in the contract, the HMO shall provide in writing to a new enrollee:

1. Notification of his or her effective date of enrollment;

2. An identification card clearly indicating that the bearer is an enrollee in the HMO or prepaid health plan;

3. Specific written details on benefits, limitations, exclusions, and availability and location of services and facilities. Thereafter, such notification shall be provided whenever ***there are significant*** changes ***in the services provided and the locations where they can be obtained, or other changes in program nature*** *[are made]*, but not less than annually;

4. An explanation of the procedure for obtaining benefits, including treatment for emergency care, the addresses and telephone numbers of the enrollee's primary care physician***/CNP/CNS*** and primary care physicians***/CNP/CNS*** for members of the enrollee's family who are similarly eligible for Medicaid;

5. Information regarding continued enrollment in the contractor's plan including patient's rights and patient's responsibilities, the reasons a person may lose eligibility for the plan, and what should be done if this occurs;

6. Procedures for resolving complaints;

7. Reasons and procedures for disenrollment;

8. Any other information essential to the proper use of the plan as may be required by the Division;

9. An explanation of where and how 24 hour a day emergency medical care and out-of-area coverage is available; and

10. An explanation of how to obtain non-covered HMO services that are Medicaid benefits.

(c) *[Information as required by (b) above shall be supplied whenever there are significant changes in the services provided or the locations where they can be obtained, or other changes in program nature and administration.]* Such information shall be provided to each enrolled family household at least 10 days prior to such change.

SUBCHAPTER 6. ***GENERAL*** ENROLLMENT

10:74-6.1 Enrollment

(a) Prior to implementation, the contractor shall obtain written approval from the Division of the method of enrollment, and the enrollment forms to be used in enrolling Medicaid beneficiaries. The contractor will adhere to the enrollment procedures required by the Division and detailed in the HMO contract.

(b) The contractor shall enroll Medicaid beneficiaries in the order in which they apply, or are assigned by the Division (in those cases where a selection is not made) without restrictions, up to contract limits.

(c) Enrollment shall be for the entire Medicaid "case" (family household).

(d) Except for State-defined HMOs, enrollment shall be for an initial six month period and in accordance with Federal statute, Section 1903(m)(2)(F) of the Social Security Act, with the exceptions indicated in N.J.A.C. 10:74-7 below. This fact shall be clearly stated on the enrollment application.

(e) For any person who applies for participation in the Plan and who is hospitalized at the time this coverage becomes effective, such coverage shall not commence until the date such person is discharged from the hospital.

(f) For those Medicaid beneficiaries enrolling in a federally qualified HMO, a "lock-in" period begins 30 days after the effective date of enrollment in the contractor's plan and ends five months thereafter. During this period, the enrollee must have good cause to disenroll or transfer from the contractor's plan. With respect to an enrollee for whom enrollment is mandatory, the lock-in period for initiation of a transfer concludes at the end of the five month period.

SUBCHAPTER 7. DISENROLLMENT *[AND TRANSFER]*

10:74-7.1 Disenrollment *[from Managed Health Care]*

(a) *[The contractor shall disenroll Managed Health Care enrollees:]* ***Disenrollment shall occur:***

1. Whenever the enrollee is no longer Medicaid eligible, unless otherwise specified in the contract;

2. Whenever the enrollee moves outside of the HMO's service area boundaries, the Contractor will remain responsible for the enrollee's care until the individual or the family/case has been disenrolled from the plan. Moving from the HMO's service area does not negate a plan's responsibility to provide Medicaid benefits. If a plan is aware that a beneficiary is residing outside its service area, the contractor shall ask DMAHS to disenroll the beneficiary due to the change of residence.

3. Whenever the enrollee is admitted to one of the following institutional settings: Nursing Facility, Residential Treatment Center, ICF/MR or long term psychiatric facility;

4. Whenever the contract between the Department and the contractor is terminated; or

5. Whenever granted through the formal grievance, in accordance with N.J.A.C. 10:74-11.1.

10:74-7.2 Disenrollment from a Federally-Qualified HMO

(a) At any time during the first 30 days of an initial period of enrollment in an HMO, the enrollee may elect to disenroll from the contractor's plan upon written notification to the Health Benefits Coordinator, without the need to state a cause.

(b) After this first 30 day period and for the next five months, the enrollee may elect to disenroll, with cause. ***Good cause shall be determined on a case-by-case basis, upon notification to the HBC.*** Good cause reasons ***may*** include, but are not limited to, failure of the

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contractor to provide services to the enrollee, failure of the contractor to respond to an enrollee's grievance, enrollee is subject to an enrollment exemption, enrollee has more convenient access to a PCP**/CNP/CNS** in another HMO. Such information shall be made available to the enrollee by the contractor and/or the health benefits coordinator.

(c) After the first six months of enrollment, the enrollee may again elect to disenroll without cause.

10:74-7.3 Disenrollment from a non-Federally Qualfied HMO

(a) For those enrollees in an HMO which is not Federally qualified, the following shall apply:

1. The enrollee may elect to disenroll from the contractor's plan, upon written notification to the Health Benefits Coordinator, without the need to state a cause, at any time.

(b) The contractor may terminate an enrollment for reasonable cause, which includes the failure of the enrollee to follow the HMO referral procedures, fraudulent conduct on the part of the enrollee, and loss of eligibility for service by the HMO. The termination shall be effected through a grievance process which is consistent with applicable State and Federal rules and regulations. If the enrollee is not satisfied, he or she may request a fair hearing in accordance with N.J.A.C. 10:49-10.

(c) Provision shall also be made for an enrollee's voluntary disenrollment from the contractor's plan in accordance with Section 1903(m)(2)(F) of the Federal Social Security Act.

(d) Until such time as the enrollee's termination of coverage becomes effective, the contractor shall remain liable for all contracted services. If an enrollee is hospitalized at the time of disenrollment or termination, the contractor shall be liable for all inpatient hospital charges through the date of discharge (if those charges are for a contracted service).

SUBCHAPTER 8. *[ENROLLMENT]* ***ENROLLEES***

10:74-8.1 Mandatory Managed Care enrollment

(a) Medicaid eligible persons who reside in geographically defined enrollment areas designated for mandatory managed care and who qualify for AFDC or AFDC-related New Jersey Care . . . Medicaid Special Programs eligibility categories shall enroll in an HMO of their choice, or, if a choice is not made, an HMO shall be assigned for them.

(b) AFDC-related individuals shall be included in the Managed Care program under the following standards:

1. Medicaid Special: covers children ages 19 to 21, using AFDC standards;

2. New Jersey Care . . . Special Medicaid Programs: covers pregnant women and children up to age 1 with incomes at or below 185 percent of poverty; children up to age 6 at 133 percent of poverty; and children born after September 30, 1983 at 100 percent of poverty.

(c) SSI-eligible individuals shall be included in the Managed Care program under the following standards:

1. Community Medicaid Only—provides full Medicaid benefits for aged, blind and disabled individuals who meet the SSI criteria, but do not receive cash assistance, including former SSI beneficiaries who receive Medicaid Continuation;

2. New Jersey Care . . . Special Medicaid Programs—provides full Medicaid benefits for aged, blind and disabled individuals who have income at or below 100 percent of the Federal poverty level and resources at or below 200 percent of SSI resource standard.

10:74-8.2 Individuals excluded from enrollment

(a) The following persons shall be excluded from enrollment in managed care:

1. Individuals in a Home- or Community-based Waiver program including Model Waiver I, Model Waiver II, Model Waiver III, Aids Community Care Alternative Program (ACCAP), Division of Developmental Disabilities Community Care Waiver (DDD-CCW); Community Care Program for Elderly and Disabled (CCPED); ABC for Children, and Traumatic Brain Injury (TBI);

2. Individuals in a Medicaid demonstration program;

3. Individuals who are institutionalized in a long term care or residential ***treatment*** facility; and

4. Individuals in the Medically Needy, Presumptive Eligibility or Home Care Expansion Program.

10:74-8.3 Voluntary managed care enrollment

(a) The following individuals shall be excluded from the automatic assignment process but may enroll voluntarily:

1. Individuals whose Medicaid eligibility will terminate within three months or less after the projected date of effective enrollment;

2. Individuals who live in a county where mandatory enrollment is not required;

3. Individuals already enrolled in an HMO with a Medicaid contract or private HMO which does not have a contract with the Department to provide Medicaid services;

4. Individuals in the Pharmacy Lock-in or Hospice programs (see "Special Status" at N.J.A.C. 10:49-14.2, and N.J.A.C. 10:53A); and

5. Individuals in eligibility categories other than AFDC or AFDC-related New Jersey Care populations.

10:74-8.4 Individuals exempted from mandatory managed care

(a) The following individuals may apply for exemption from mandatory enrollment in an HMO:

1. Pregnant women, beyond the first trimester, who have an established relationship with an obstetrician who is not a participating provider in the contractor's plan. These individuals will be tracked and enrolled after 60 days postpartum;

2. Individuals with a terminal illness who have an established relationship with a physician who is not a participating provider in the contractor's plan;

3. Individuals with a chronic, debilitating illness who have received treatment from one physician with whom they have an established relationship;

4. Individuals who do not speak English or Spanish who have an illness requiring on-going treatment and who have an established relationship with a physician who speaks the same language, if there is no available primary care physician**/CNP/CNS*** in any of the participating managed care plans who speaks the client's language; and

5. Individuals who do not have a choice of at least two PCPs within 30 miles of their residence.

(b) If the beneficiary(s) does not exercise his or her option to voluntarily select an HMO within a specified time period, the State will assign the beneficiary to an HMO.

(c) If a beneficiary is granted an exemption, he or she will continue to receive Medicaid services from Medicaid providers in the traditional fee-for-service setting.

10:74-8.5 Coverage prior to enrollment

If the beneficiary needs Medicaid-covered services from the date of eligibility prior to the completion of the enrollment process, care shall be given by providers enrolled in the New Jersey Medicaid program. These providers should bill Medicaid under the normal fee-for-service system, in accordance with N.J.A.C. 10:49-8.

10:74-8.6 Coverage after enrollment

(a) *[After the beneficiary receives his or her HMO Identification Card indicating the effective enrollment date in the HMO, he or she shall show this card to all Medicaid providers.]* ***The HMO shall issue an identification card to the beneficiary indicating the effective enrollment date in the HMO.***

(b) Beneficiaries shall consult their primary care physician (PCP)**/CNP/CNS*** for necessary medical care and services.

(c) The PCP**/CNP/CNS*** shall provide all necessary treatment or make the appropriate referral.

*[10:74-8.7 Voluntary enrollment

(a) The following procedures shall apply to voluntary beneficiary enrollment in an HMO:

1. For beneficiaries not required to enroll in managed care, enrollment will be voluntary. Disenrollment will be allowed in accordance with N.J.A.C. 10:74-7.

2. If the beneficiary needs Medicaid covered services from the date of eligibility prior to the completion of the enrollment process, care will be given by providers enrolled in the New Jersey Medicaid program. These providers should bill Medicaid under the normal fee-for-service system, in accordance with N.J.A.C. 10:49-8.

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3. Once the beneficiary receives his or her HMO Identification Card indicating the effective enrollment date in the HMO, he or she shall show this card to all Medicaid providers.

i. Beneficiaries will consult their primary care physician (PCP) for necessary medical care and services.

ii. The PCP will provide all necessary treatment or make the appropriate referral.

iii. Emergency procedures are governed by N.J.A.C. 10:74-9.]*

SUBCHAPTER 9. EMERGENCY SERVICES

10:74-9.1 Emergency services

(a) The contractor shall, on a 24-hour-a-day, seven-day-a-week basis, make available emergency services, that is, ***those services within or outside of the contractor's enrollment area, required to be provided to an enrollee as a result of an injury or the sudden onset of a serious illness having the potential of causing immediate disability or death, or requiring the immediate alleviation of severe pain, or the time required to reach the contractor's facilities or the facilities of a provider with which the contractor has arrangements, would have meant risk of permanent damage to the recipient's health.*** *[treatment of a life-threatening or organ-threatening condition or potentially life or organ-threatening condition of such immediate nature that delay in treatment would be dangerous to the health or well-being of the enrollee (as defined in N.J.A.C. 10:74-1).

1. "Emergency room services" (health services rendered in an emergency room facility, which may or may not relate to a truly emergent condition) shall be distinct from "emergency services" (care rendered in the event of a medical emergency).

2. Criteria by which a medical emergency is determined include severity and rapid onset.]*

(b) The contractor shall give the enrollee an explanation of where and how 24 hour a day emergency medical care and out-of-area coverage is available, and shall explain to the enrollee the procedure for obtaining treatment for emergency care.

(c) Emergency services, as distinguished at (a)*[1]* above, are covered services, even if they have not been authorized by the HMO *[physician]*.

SUBCHAPTER 10. MEDICAL RECORDS; PEER REVIEW AND QUALITY ASSURANCE

10:74-10.1 Medical records

(a) Each contractor shall maintain a medical record on each member who has received medical services while enrolled in the contractor's plan, and shall retain such records in accordance with 45 C.F.R. Part 74 and appropriate State law and rule.

(b) Each enrollee's medical records shall be kept in detail consistent with applicable Federal and State requirements and good medical and professional practice, based on the service provided.

(c) Each contractor shall conform to the standards of confidentiality of information mandated for Federal and State officials (Section 1902(a)(7) of the Federal Social Security Act, 42 CFR 431.300, N.J.S.A. 30:4D-7(g), and N.J.A.C. 10:49-9.4 and 9.5).

(d) Medical records of enrollees shall be sufficiently complete to permit subsequent peer review or medical audit. All required records, either originals or reproductions thereof, shall be maintained in legible form and readily available to appropriate Division professional staff or its agents, upon request for review, audit and evaluation by professional medical, nursing and investigative staff, in accordance with appropriate Federal and State laws, rules and regulations.

(e) The contractor shall release medical records of enrollees, as may be directed by authorized personnel of the Division, appropriate agencies of the State of New Jersey or the United States Government, consistent with the provisions of confidentiality (Section 1902(a)(7) of the Federal Social Security Act, 42 CFR 431.300, N.J.S.A. 30:4D-7(g), and N.J.A.C. 10:49-9.6).

10:74-10.2 Peer review

(a) Each contractor shall submit a description of its system of internal peer review to the Division. The system shall assure that acceptable professional practice shall be followed by the contractor and any subcontractors of that contractor.

(b) Each contractor shall provide the Division with an explanation of the relationship between peer review procedures and any applicable peer review organization (PRO), should such exist.

(c) The number of cases reviewed and summaries of the actions taken by the peer review system shall be reported at least annually to the Division.

10:74-10.3 Quality assurance

(a) The Division and the U.S. Department of Health and Human Services shall have the right to inspect or otherwise evaluate the quality, appropriateness and timeliness of services performed by the contractor in accordance with State and Federal requirements.

(b) The contractor shall offer assurances that all health services required by its enrollees shall meet quality standards within the appropriate medical practice of care, consistent with the medical community standards of care.

(c) The contractor shall submit to the Division for approval a detailed plan for establishing and maintaining an internal quality assurance system to assure that acceptable professional practice shall be followed by the organization and its subcontractors. This shall include a proposed system for continuing performance review and health care evaluation, that is, explanation of the methods which the contractor proposes to follow in guaranteeing that the services provided each enrollee shall meet criteria established by appropriate Federal and State statutes and regulations (42 CFR 434.34).

(d) The contractor shall agree to medical audits relating to its standard of medical practice and the quality, appropriateness and timeliness of health services provided all members, as may be required by the Division. The medical audit shall include, at a minimum, the review of:

1. The delivery system for patient care;

2. Utilization data and medical evaluation of care provided and patient outcomes for specific enrollees as well as for a statistically representative sample of enrollee records;

3. The peer review system and reports; and

4. The enrollee and/or HMO grievances relating to medical care, including their disposition.

(e) The results of the medical audits may be disclosed to the public as provided by State and Federal law.

(f) The contractor shall agree to release the comprehensive medical records of enrollees upon termination of their coverage, as may be directed by the enrollee, authorized personnel of the Division, appropriate agencies of the State of New Jersey, or of the United States Government.

SUBCHAPTER 11. GRIEVANCE PROCEDURE

10:74-11.1 Grievance procedure

(a) The contractor shall establish a grievance procedure for the receipt and adjudication of any and all complaints from enrollees relating to quality, scope, nature and delivery of services.

(b) The grievance procedure shall be communicated to the enrollees in writing and shall provide for expeditious resolution of grievances by the contractor's personnel who shall be at a decision-making level with authority to require corrective action.

(c) The contractor shall review the complaint procedure at reasonable intervals, but no less than annually, for the purpose of improving the procedure.

(d) Any amendment to the procedure shall be presented to the Division prior to the implementation of any change, and the Division's written approval shall be obtained, in accordance with 42 C.F.R. 434.42, in order to assure that enrollees are afforded an opportunity to be heard.

10:74-11.2 Fair hearing

(a) The contractor shall ensure that all Medicaid enrollees shall be informed in a simple, brief statement, of their rights to a fair hearing in accordance with N.J.A.C. 10:49-10, and of the contractor's grievance review procedures. This may be accomplished by an annual mailing, as noted in N.J.A.C. 10:74-5.1(b)3, a member handbook, or any other method which shall not diminish the enrollees' opportunity to be heard.

(b) The contractor shall report all grievances to the Division with a brief statement of the problem and resulting outcome on a quarterly basis.

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SUBCHAPTER 12. REIMBURSEMENT

10:74-12.1 Determination of contractors' costs

(a) The contractor shall submit, for DMAHS approval, information in sufficient detail to describe:

1. Contractor costs for each category of service covered under this contract;

2. The major cost components that constitute each capitation rate, including at a minimum, the projected costs:

i. Of hospital services;

ii. Of physician and other health services; and

iii. Of administration; and

3. A detailed description of the underlying assumptions and procedures followed by the contractor in determining its costs.

10:74-12.2 Capitation payments

Compensation to the contractor shall consist of monthly capitation payments for each enrollee. These payments shall be for a defined scope of services to be furnished to a defined number of enrollees, for providing the services contained in the Benefits Package as described at N.J.A.C. 10:74-3.1. Monthly capitation payments shall not exceed the upper payment limit, which is the cost of providing those services on an established Medicaid fee-for-service basis to an actuarially equivalent, non-enrolled population group.

10:74-12.3 Derivation of capitation rates

(a) Capitation rates shall be derived from the Division's Base Year(s) experience data which resides in the New Jersey Medicaid Management Information System.

(b) A file containing fee-for-service (FFS) data is developed on a date of service basis for all 21 counties. The file contains total claims, utilization counts, and member months. Claim dollars, utilization counts, and member months for which an HMO would not be at risk under the managed care program are removed from the data. Some examples of why an HMO would not be at risk for certain costs include program services retained by the State (for example, mental health care), costs incurred during the prior quarter of coverage, or costs incurred after Medicaid eligibility but before enrollment into an HMO. The data are summarized by:

1. Calendar year incurred

2. Individual county

3. Category of assistance (Program Status Code)

4. Age and sex

5. Category of service, for example, inpatient hospital, emergency room facility, physician office visit

(c) In addition to adjusting the FFS data to exclude services not covered under the managed care program, additional adjustments must be made to modify FFS data for expected changes in the services to be delivered, catastrophic claims, administration, and trend. Programmatic adjustments estimate what the FFS experience would be after the programmatic changes. The catastrophic adjustment smooths out the experience of a given county by reallocating high cost claims. An additional adjustment must be made to cover the State's cost of administering the program. An inflation/utilization adjustment, that is, trend, is used to estimate what the appropriate service cost should be at a given point in the future.

1. Catastrophic smoothing: Because such claims are unpredictable and can happen in any county, a smoothing technique is used to average the experience of catastrophic claims over all counties. Rates are adjusted by the difference between the county- and rate-group-specific volume of catastrophic payments per eligible month and the corresponding state-wide average.

2. Administration: An administrative load equal to the costs of running the Medicaid program is included as part of the upper payment limit (UPL) calculations.

3. Trend adjustment: To adjust for the effect of inflation, a trend adjustment is calculated by examining a 35-month payment stream by category of service (COS) per eligible month. A rolling 12-month average payment per eligible month is calculated for each COS to smooth the trend line. Then an annual trend figure is determined by comparing a given data point to a data point 12 months prior.

4. Based on the foregoing, a fee-for-service equivalent (FFSE) is calculated, which expresses the FFS experience, modified for programmatic changes, catastrophic claims, and trend, on a per-member per-month (PMPM) basis. The FFSE is then decomposed into component parts of annual utilization per 1,000 members and unit cost figures.

5. The Medicaid FFS experience is then altered to reflect the managed care environment. Adjustments to the FFSE are made to reflect ***actuarially estimated***:

i. Reduced utilization of inpatient hospital, outpatient hospital;

ii. Increased utilization of physicians' offices;

iii. Reduced utilization of emergency room;

iv. Reduced utilization of physician specialists;

v. Increases in certain physician's fees;

vi. Increases utilization of physician office visits;

vii. Reduced utilization of surgery;

viii. Increased average cost of surgery;

ix. Reduced average drug cost;

x. Increased administrative load.

6. The PMPM figure that results is the capitation rate.

10:74-12.4 Adjustment of capitation rates

(a) Capitation rates are prospective in nature and will not be adjusted retroactively.

(b) Capitation rates shall not be subject to renegotiation during the contract period, except when any changes in Federal and/or State laws, rules, regulations or covered services so require.

10:74-12.5 Payment of capitation to contractor

(a) The monthly capitation payments are due to the contractor from the enrollees' effective dates of enrollment until the effective dates of disenrollment or termination of the HMO's contract, whichever occurs first.

(b) DMAHS will pay the capitation by the fifteenth day of any month during which health services will be available to an enrollee; provided that information pertaining to enrollment and eligibility, which is necessary to determine the amount of said prepayment, is received by DMAHS by the eighth day of the month.

(c) When DMAHS's capitation payment obligation is computed, if an enrollee's coverage begins after the first day of a month, DMAHS will pay the contractor a fractional capitation payment that is proportionate to the part of the month during which the contractor provides coverage. Payments are calculated and made to the last day of a calendar month, except in the case of death of the enrollee.

(d) Capitation payments for full month coverage shall be recovered from the contractor on a prorated basis when an individual is admitted to a skilled or intermediate care facility, extended acute psychiatric care facility or other institution. The individual shall be disenrolled from the contractor's plan on the day prior to such admission.

(e) When an enrollee is shown on the enrollment roster as covered by a contractor's plan, the contractor shall be responsible for providing services to that person from the first day of coverage shown to the last day of the calendar month of the effective date of disenrollment, and DMAHS will pay the contractor its capitation rate during this period of time.

10:74-12.6 Coverage of a hospitalized person

For any eligible person who applies for participation in the contractor's plan, but who is hospitalized prior to the time coverage under the plan becomes effective, such coverage shall not commence until the date such person is discharged from the hospital, and DMAHS shall be liable for payment for the hospitalization, including any charges for readmission within 48 hours of discharge for the same diagnosis. If an enrollee's disenrollment or termination becomes effective during a hospitalization, the contractor shall be liable for hospitalization until the date such person is discharged from the hospital, including any charges for readmission within 48 hours of discharge for the same diagnosis.

10:74-12.7 Services provided in excess of limits

For Medicaid covered services provided to an enrollee by the contractor or other Medicaid participating provider in excess of the stated limits set forth at N.J.A.C. 10:74-3.1, the participating provider will be reimbursed by DMAHS according to the Medicaid fee schedule,

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provided that the participating provider has received *[the Exhaustion of Benefits (EOB) letter from the contractor]* ***a letter from the contractor saying that the stated limits have been exhausted***.

10:74-12.8 Situations wherein no payment will be made

(a) The contractor shall not be responsible and shall not be paid when DMAHS has previously notified the contractor by mail specifying enrollee-months for which CMAHS is not responsible.

(b) If an enrollee is deceased and appears on the beneficiary file as active, the contractor shall promptly notify DMAHS. DMAHS will recover through offset all capitation payments made after the date of death.

(c) Newborn babies are the responsibility of the plan that covered the mother on the date of birth. When the enrollment roster from DMAHS does not include the case addition, the contractor will notify DMAHS when the mother has included the baby in the Medicaid case (family household) with the County Welfare Agency to coordinate the adjustment of coverage. The mother's plan is responsible for the hospital stay ***and subsequent services*** for the newborn following delivery. *[The plan of record for the child is responsible for subsequent services based on enrollment in the plan.]*

SUBCHAPTER 13. GENERAL REPORTING REQUIREMENTS

10:74-13.1 Reporting requirements

(a) Each contractor shall furnish such timely information and reports as the Division may find necessary, and on such forms or in such format as the Division may prescribe, as specified in the contract. Such reports shall include information sufficient for Division management, monitoring and evaluation purposes in at least the following areas:

1. Enrollment and disenrollment;
2. Encounter data at a level of detail specified in the contract, and enrollee identification data;
3. Utilization data for covered services provided under the contract;
4. Utilization data for family planning services;
5. Financial data; and
6. Third party liability (TPL) recoveries for enrollees.

(b) The contractor shall submit to the Division at least annually information specified by the Division on non-Medical enrollees for purposes of comparative analyses of service use and cost patterns.

(c) Each contractor shall maintain records in accordance with 45 C.F.R. 74, and other applicable State and Federal law, and make available to authorized personnel of the Division all records created pursuant to N.J.A.C. 10:74-2.1 and 10.1.

(d) The contractor shall maintain a uniform accounting system that adheres to generally accepted accounting principles.

[(e) The contractor shall provide the primary care physicians with quarterly utilization profiles. These profiles shall include, but not be limited to, utilization information on member encounters with personal care physicians, specialty claims, prescriptions and emergency room use.]

(e)*[(f)]* The contractor shall collect and analyze data to implement effective quality assurance, utilization review and peer review programs. The contractor shall review and assess data using statistically valid sampling techniques.

(f)*[(g)]* The contractor shall agree to make appropriate provisions to physically secure and safeguard documents and files related to the State of New Jersey pursuant to 42 CFR Part 431, Subpart F.

(g)*[(h)]* All significant changes that may affect the contractor's performance under the contract shall be immediately reported to the Division.

(h)*[(i)]* The contractor, with the prior written approval of the Division as to form and content, shall arrange for the distribution of informational materials to all subcontractors providing services to enrollees, outlining the nature, scope *and contract requirements.

SUBCHAPTER 14. CONTRACT SANCTIONS

10:74-14.1 Contract sanctions

(a) Provisions under federal law relating to imposition of penalties upon providers of health care services can be found at Section 1903(m)(5)(A) of the Social Security Act.

(b) Monetary damages shall be imposed by DHS for failure of the contractor to comply with the timeliness and accuracy of claims processing; timeliness and accuracy of data submittals; and any losses of funds incurred by the State due to the contractor's non-compliance. (See 42 U.S.C. 1396b(m)(5)(A); N.J.S.A. 30:4D-1; N.J.A.C. 10:49-1 and 10:49-11.)

(c) The contractor shall submit a corrective action plan for any deficiency identified by the Department. The contractor shall implement the corrective action established by the Department. Damages will be applied for failure to implement the corrective action plan. (See 42 U.S.C. 1396b(m)(5)(A); N.J.S.A. 30:4D-1; N.J.A.C. 10:49-1 and 10:49-11.)

(d) The contractor shall comply with all performance standards, whcih shall be defined as compliance with all requirements specified in the contract. Failure to do so will result in the following sanctions:

1. DMAHS may suspend the contractor's right to enroll new members, for any length of time specified by DMAHS;
2. DMAHS may notify enrollees of contractor non-performance and permit enrollees to transfer to another plan;
3. DMAHS may terminate the contract, under the provisions of the contract; and/or
4. DMAHS may withhold all or part of the monthly capitation payments.

(e) Should the contractor fail to satisfy any terms or requirements of the contract, damage to the State shall be presumed, and the contractor shall pay to the State is actual damages.

1. For failure to comply with any requirements concerning services provided to enrollees, DMAHS shall impose sanctions in an amount equal to the costs incurred by the State to ensure adequate service delivery to affected enrollees. (See 42 U.S.C. 1396b(m)(5)(A); N.J.S.A. 40:4D-1; N.J.A.C. 10:49-1 and 10:49-11.) If transfers of patients are required, the costs associated with such transfers shall be assessed against the contractor.

2. For failure to comply with any material contract provisions for which damage cannot be quantified, DMAHS shall notify the contractor in writing and specify a period of time in which the contractor shall respond in writing and specify a good period of time in which the contractor shall respond in writing, and will specify a reasonable period of time in which the contractor shall remedy its non-compliance. If the contractor's non-compliance is not corrected by the specified date, DMAHS shall assess sanctions, as provided for in the contract.

3. DMAHS shall deduct sanctions from any money payable to the contractor.

SUBCHAPTER 15. STATE-DEFINED HMOs

10:74-15.1 Requirements for State-defined HMOs

(a) A State-defined HMO is subject to all of the requirements of N.J.A.C. 10:74-1 through 10:74-14, with the following exceptions noted:

1. A guarantee of Medicaid eligibility cannot be offered to enrollees of a State defined HMO (1902(e)(2)(A) of the Social Security Act);

2. The State may not restrict the period for requests for termination of enrollment without cause to the first month of each period of enrollment for enrollees of a State-defined HMO (1903(m)(2)(F) of the Social Security Act);

(b) Medicaid members of a State-defined HMO receive all Medicaid services for as long as they remain Medicaid eligible.

1. Out-of-plan services are reimbursed through fee-for-service and do not require prior authorization by the HMO.

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(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Standards for Shelters for Victims of Domestic Violence

Readoption: N.J.A.C. 10:130

Proposed: March 20, 1995 at 27 N.J.R. 1126(a).

Adopted: May 23, 1995 by William Waldman, Commissioner, Department of Human Services.

Filed: May 24, 1995 as R.1995 d.311, **without change**.

Authority: N.J.S.A. 30:14-1 et seq., specifically 30:14-5, and 37:1-12.1 et seq., specifically 37:1-12.3.

Effective Date: May 24, 1995.

Expiration Date: May 24, 2000.

Summary of Public Comments and Agency Responses:

Comments were received from Barbara M. Price, Executive Director of the New Jersey Coalition for Battered Women.

COMMENT: Ms. Price recommends that the Funding Priorities section of subchapter 3 of the standards (Maintaining and Establishing Shelters for Victims of Domestic Violence) be amended by deleting some of the wording at N.J.A.C. 10:130-3.5(a) and the entire text of N.J.A.C. 10:130-3.5(b) regarding the issuance of marriage license fees for new program development in counties that do not have emergency shelter facilities. The Coalition contends that these funding priorities are no longer necessary since the Division has achieved its long-term goal of establishing at least one shelter for victims of domestic violence in each of New Jersey's 21 counties.

RESPONSE: The Division concurs with the Coalition's contention; however, the existing rules and the funding priorities contained therein provide the Division with a desirable amount of flexibility regarding presently unanticipated program development needs. Additionally, the existing wording that enables agencies to receive "a portion of at least 80 percent of marriage license fee collections" does not preclude the full distribution of 100 percent of the funds to existing shelter programs. Therefore, the Division is making no changes to the rules as proposed.

Executive Order No. 27 Statement

The rules being readopted are not subject to Federal standards or requirements, and a Federal exceedance analysis is not applicable to the rulemaking.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:130.

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PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF ENVIRONMENTAL PLANNING

Statewide Water Quality Management Plan Amendment: Addendum to New Jersey's List of Water Quality Limited Waterbodies as Defined in Section 303(d) of the Federal Clean Water Act

Public Notice

Take notice that the New Jersey Department of Environmental Protection (Department) is seeking public comment on a proposed addendum to New Jersey's 1992 list of water quality limited waters. This addendum is in response to the requirements under 303(d)(1)(A) of the Federal Clean Water Act, and amends New Jersey's prior submittal under 303(d) for 1992 entitled *Identification and Setting of Priorities for 303(d) Water Quality Limited Waters in New Jersey.* The list (also known as the "303(d) List") is a component of the Statewide Water Quality Management Plan, as required by the Water Quality Management Planning Rules at N.J.A.C. 7:15-2.1(a)8ii. Upon adoption by the Department, this addendum will also become part of the Statewide Water Quality Management Plan.

The purpose of the addendum is to include additional candidate waterbodies which are determined or suspected to be "use impaired" meaning that the quality of the waters do not meet the water quality standards for protection of designated uses, or that actual impairment of uses has been identified or is suspected. Waters presented in the 303(d) List (current and addendum) represent "candidate waters" for water quality-based effluent limitations in NJPDES permits for discharges into those waters, as required by the Clean Water Act. These waters will remain "candidate waters" pending further investigations as to 1) the sources and nature of the perceived impairment and 2) whether the waters qualify to be delineated as water quality limited and if Total Maximum Daily Load (TMDL) determinations are appropriate.

This addendum also modifies the 1992 303(d) List, noted above, by deleting the ranking (High, Medium, Low) previously assigned to the waterbodies. Only waters currently scheduled for TMDL analyses are prioritized. NJDEP is committed to changing its permitting system and nonpoint source pollution control programs to address water quality improvements on a watershed scale (as stated in the 1992 submittal). A watershed-based management program means that many reaches can be encompassed in a regional water quality study that can include TMDL development. The Department, as part of its effort to establish a watershed permitting and water management program, is in the process of developing a system for watershed prioritization which takes into account a wide range of issues including but not limited to water quality impairment. The individual waterways newly presented in this list will receive their individual ranking when their respective watersheds are ranked against one another. The Department will propose the ranking in a 1996 303(d) List that will be presented for public comment early in 1996.

This addendum leaves in place the existing "TMDL Priority List" as established in the prior 303(d) submittals. TMDL development is continuing in these waterbodies and is anticipated to take the next two years for completion. The affected waterbodies are the Whippany River, the NY/NJ Harbor Estuary and the Delaware River Estuary.

Both the 1994 draft addendum and the 1992 document entitled *Identification and Setting of Priorities for 303(d) Water Quality Limited Waters in New Jersey,* are available from the Office of Environmental Planning, CN 418, 401 East State Street, Trenton, NJ 08625, or by calling (609) 633-1179.

Interested persons should submit written comments on the addendum to Daniel J. Van Abs, Ph.D., at the Department address noted above. All comments must be submitted within 60 days of the date of this notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Department with respect to the addendum.

Any interested persons may request in writing that the Department hold a nonadversarial public hearing on the amendment (or extend the public comment period in this notice to 30 additional days). These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this notice to Dr. Van Abs, at the Department address cited above. If a public hearing for the addendum is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(b)

DIVISION OF PARKS AND FORESTRY

Natural Areas System
Notice of Adoption of Management Plan for Oswego River Natural Area

Authority: N.J.S.A. 13:1B-3; 13:1B-15.4 et seq.; 13:1B-15.12a et seq.; and 13:1D-9; and N.J.A.C. 7:5A.

Take notice, that in accordance with N.J.A.C. 7:5A-1.8 and 1.12, and the recommendation of the Natural Areas Council (Council), Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection (Department), has adopted a management plan for the Oswego River Natural Area.

The Oswego River Natural Area is a 1,927-acre tract located within Wharton State Forest in Washington and Bass River Townships, Burlington County. The tract is characterized primarily by Atlantic white cedar swamp, pitch pine lowlands, pine-oak forest, Pine Barren hardwood swamp, and Pine Barren savanna communities and is administered by the Division of Parks and Forestry through Wharton State Forest (hereinafter referred to as the administering agency). The Oswego River Natural Area was designated to the Natural Areas System in 1978. The Natural Areas System is established and administered pursuant to N.J.S.A. 13:1B-15.4 et seq. and 13:1B-15.12a et seq. These statutes give the Department the responsibility of acquiring, maintaining and preserving natural areas as examples of the State's natural heritage and as places of scientific study. Currently the System contains 42 areas totalling nearly 31,000 acres.

The rules governing the Natural Areas System provide guidelines for the preparation of management plans at N.J.A.C. 7:5A-1.8. The primary purposes of a natural area management plan are to describe the natural features of the area and prescribe specific long- and short-term management techniques and public uses to ensure preservation of the area in accordance with its management objective (see N.J.A.C. 7:5A-1.8). After a management plan is drafted by the Department and subjected to internal review, it is submitted to the Natural Areas Council, an advisory group to the Commissioner of the Department, for review and comment. The Council may then recommend to the Commissioner that the plan be adopted. Adoption is accomplished through publication of a notice in the New Jersey Register by the Commissioner.

The management objective for the Oswego River Natural Area is preservation of hardwood swamp, pitch pine lowland, pine-oak, Atlantic white cedar, and bog communities, which serve as rare species habitat (N.J.A.C. 7:5A-1.13(a)27). The management plan for this area primarily specifies actions that will be taken to ensure preservation of several forest communities of the Pine Barrens and populations of State endangered species. The most significant species within the natural area is the State endangered bog asphodel *(Narthecium americanum).* Three large viable populations of this plant species, found nowhere else in the world outside of the New Jersey Pine Barrens, occur in the freshwater wetland habitats adjacent to the Oswego River in this natural area. Management actions specified by the management plan include mapping locations of populations of State endangered species, threatened animals and plant species of concern; monitoring these species; and, if necessary, performing prescribed burning, mowing or cutting of vegetation to help manage species which require fire or other disturbance to remain viable. Adoption of this management plan will help to ensure protection of several State endangered species and will have a long-term positive effect on the public, including that portion of the public that conducts research and educational activities.

At its June 15, 1993 meeting, the Natural Areas Council reviewed and received staff recommendations on a draft management plan prepared by the Department for the Oswego River Natural Area. By unanimous resolution, the Council adopted recommendations for management of the Oswego River

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Natural Area and submitted these recommendations in the form of a management plan to the Commissioner of Environmental Protection for approval in accordance with the procedure at N.J.A.C. 7:5A-1.8. The Commissioner agreed with all of the recommendations of the Council and approved the Oswego River Natural Area Management Plan on May 19, 1995.

Following is a summary of the management techniques prescribed in the Oswego River Natural Area Management Plan along with an explanation for each:

1. By September 30, 1995, the Office of Natural Lands Management (ONLM) will survey for State endangered plants and plant species of concern recorded from the natural area. The ONLM will perform periodic inspections to assess future management needs. If funding becomes available in the future, then the ONLM will also arrange for surveys of endangered and threatened animals.

This management requirement is included to help ensure the preservation of these species, which experience various degrees of rarity in the State and nation.

2. By October 31, 1995, the ONLM will provide the administering agency with a map indicating known and possible locations of all endangered and threatened animals and all endangered plants and plant species of concern. The map will be updated by the ONLM should locations for any additional species be discovered.

This management requirement is included to allow the administering agency to more effectively manage the natural area and the species within it, and to ensure consideration of these species in future planning in the natural area.

3. The ONLM, in cooperation with the administering agency, will monitor rare plant species populations and if determined necessary will prepare a prescribed burning plan for the natural area by December 31, 1995. Prescribed burning would assist in managing habitat for the following species: *Carex barrattii, Calamovilfa brevipilis, Muhlenbergia torreyana* and *Spartiniphaga carterae.*

This management technique is included for proper management of several rare plant species which require fire or other disturbance to remain viable. The Commissioner hereby approves of prescribed burning to eliminate safety hazards and manage habitat in accordance with N.J.A.C. 7:5A-9(e)10.

4. In the event that prescribed burning is not a viable option for rare species management, the ONLM, in cooperation with the administering agency, will prepare an alternate plan whereby mowing or cutting of vegetation will be used to open the habitat around certain plant populations threatened by succession. The implementation of such a plan will be subject to adequate State Park Service staffing and other operating priorities.

This management technique is included for proper management of several rare plant species whose populations can become threatened by habitat succession. The Commissioner hereby approves of habitat manipulation that contributes to the management objective of the natural area in accordance with N.J.A.C. 7:5A-1.9(e)12.

5. By July 31, 1995, the administering agency, in cooperation with the ONLM, will post signs indicating that motorized vehicle use and foot traffic is prohibited in selected areas where rare species have been observed.

This management technique is required to reduce trampling and degradation of habitat for certain rare species, which has been observed by the Department in the natural area.

6. Any activity that would entail removal of the shrubby border around Harrisville Pond is strongly discouraged. Any proposal that would involve removal of the shrubby border will be submitted to the ONLM for Natural Areas Council review and approval by the Commissioner.

This requirement is included to protect the habitat of the pine barrens bluet *(Enallagma recurvatum),* a rare invertebrate which has been observed at Harrisville Pond. Limiting and/or restricting access and use to achieve the management objective is required in accordance with N.J.A.C. 7:5A-9(e)16. Large lakes and their bordering vegetation are essential habitat components for *Enallagma recurvatum.*

7. In the unlikely event that the State Forester has determined that egg mass counts and prior year defoliation indicates that tree mortality will be severe without intervention, the Division of Parks and Forestry will be allowed to perform gypsy moth control activities within the natural area only after Natural Areas Council review of a gypsy moth control plan prepared by the Division and approval of the plan by the Commissioner of DEP. No pine looper control activities are permitted in the natural area.

This management requirement is included to protect the three rare invertebrate species documented from the natural area: a noctuid moth *(Spartiniphaga carterae),* pitcher plant borer moth *(Papaipema appasionata),* pine barrens bluet *(Enallagma recurvatum)* and numerous other undocumented rare invertebrates, as well as to reduce possible pollution of the wetlands. This review procedure is included in this plan in accordance with N.J.A.C. 7:5A-1.9(e)13. Control of pine looper outbreaks is prohibited because the looper is a native species that experiences cyclic outbreaks that are unlikely to exert any long-term negative impact on the natural area, and because the needless control of this species may have a severe detrimental impact on populations of the many rare invertebrate species believed to exist within the natural area.

8. The administering agency will coordinate with the ONLM if any herbicide application is necessary within the natural area.

This requirement is included to protect rare species populations from inadvertent roadside herbicide application.

9. The Division may continue the practice of releasing water at Harrisville Pond dam to relieve the pressure on the dam caused by sudden increases in water levels due to rainstorms. This practice may be conducted only to the extent necessary to maintain normal water levels.

This management requirement is necessary because disruption of the water regime in the natural area is a major threat to many of the rare plant species found there. This requirement is included in this plan in accordance with N.J.A.C. 7:5A-9(e)8.

10. The New Jersey Pinelands Commission, which monitors the hydrology of Oswego River waters, will report any major changes in water quality of the Oswego River to the ONLM.

This management requirement is included to help protect the rare plants and animals inhabitating the river corridor that may be affected by water quality changes within the Oswego River.

11. If the private inholding (Block 27, lot 16) is acquired by the State, the ONLM recommends that it be proposed for addition to the Natural Area System in accordance with N.J.A.C. 7:5A-1.12.

This management requirement is included because addition of this property to the natural area would ensure protection of the cedar swamp habitat as indicated in the management objective for the natural area.

12. The administering agency will post State Natural Area signs at access points and along the boundary of the natural area at a maximum of ten per mile by July 31, 1995. These signs will be replaced by the administering agency with assistance from the ONLM as needed.

Posting of the boundaries of all natural areas is required in accordance with N.J.A.C. 7:5A-1.9(e)1.

13. The ONLM will provide the administering agency with State Natural Area boundary signs as needed.

The ONLM, which is responsible for overall administration of the Natural Areas System, creates and distributes paper boundary signs for posting of all State Natural Areas.

14. Current uses of the natural area, which include canoeing, kayaking, hiking, bird watching, botanizing, hunting, fishing (shoreline and from a boat with an electric motor), swimming, picnicking and horseback riding, as well as recreational use of the day-use area at Harrisville Pond, will be allowed to continue in the Natural Area. The ONLM and the administering agency will continue to monitor the above uses and/or any illegal uses to assess any potential adverse impacts on the natural features occurring in this area.

The above uses are compatible with preservation of the species and communities that occur within the natural area and are authorized in accordance with N.J.A.C. 7:5A-1.9(e)16.

15. Although restricting vehicle access in the areas of erosion is difficult, if it is determined that populations of *Narthecium americanum* are being negatively impacted by erosion resulting from vehicles, measures will be formulated by the administering agency and the ONLM to reduce or eliminate the threat.

This management technique is included to reduce the negative impact of sedimentation of the Oswego River and the rare species associated with it. Sedimentation can change the ecology of the area by filling wetlands and increasing the rate of succession.

16. The administering agency will obtain all applications to conduct research or collect specimens, forward a copy to the ONLM, and provide a response in cooperation with the ONLM.

This requirement is included in accordance with procedures for conducting research and collecting specimens in natural areas outlined in N.J.A.C. 7:5A-1.10, and to ensure thorough review of all proposals.

17. The administering agency will contact the Historic Preservation Office if any plans materialize to revise the road and/or trail network near Martha or Harrisville.

This management requirement is included so that the Historic Preservation Office can review the plans and provide comment in order to protect cultural remains in the natural area.

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18. Prescribed burning by the Bureau of Forest Fire Management will continue to be allowed within the natural area west of Old Martha Road where plow lines currently exist. If the Bureau of Forest Fire Management intends to burn a larger acreage than what is currently burned, the Bureau will submit a plan to the ONLM for review by the Council and approval by the Commissioner.

This management requirement is included in this plan in accordance with N.J.A.C. 7:5A-1.9(e)10.

19. The ONLM will forward a copy of any plan submitted by the Bureau of Forest Fire Management that prescribes burning in the area of Martha or Harrisville to the Historic Preservation Office for review.

This management requirement is included so that any cultural remains in the area of Martha or Harrisville can be preserved.

20. The administering agency and the ONLM will perform visual monitoring of cultural resources within the natural area during routine monitoring of the natural area.

This management requirement is included to protect cultural resources within the natural area.

Copies of the adopted plan may be obtained from:

Office of Administrative Law
Quakerbridge Plaza, Building 9
CN 049
Trenton, New Jersey 08625

Department of Environmental Protection
Division of Parks and Forestry
Office of Natural Lands Management
CN 404
Trenton, New Jersey 08625

This notice is published as a matter of public information.

(a)

OFFICE OF ENVIRONMENTAL PLANNING

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection (Department) is seeking public comment on a proposed amendment to the Monmouth County Water Quality Management (WQM) Plan. This amendment was submitted on behalf of the Township of Middletown Sewerage Authority (TOMSA). The proposal would amend the TOMSA Wastewater Management Plan by identifying two separate sewer service area expansions for the TOMSA Belford Sewage Treatment Plant (STP) with a corresponding wastewater planning flow expansion of 37,800 gallons per day. One of the proposed service area expansions would serve 53 existing and 11 proposed residential units located within portions of Blocks 21, 22, 23, 27, 28, 29, 30, 33, 34, and 37 in the Borough of Atlantic Highlands, which falls within the Atlantic Highlands/Highlands Regional Sewerage Authority sewer service area of the Belford STP. The other service area expansion would serve 27 existing and 35 proposed residential units located within portions of Blocks 296, 297, and 298 in Middletown Township. The proposed amendment brings the total projected wastewater planning flow for the Belford STP to 12.17 million gallons per day.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Monmouth County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Department, Office of Environmental Planning, CN 418, 401 East State Street, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Environmental Planning at (609) 633-1179.

Interested persons may submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, at the Department address cited above with a copy sent to Mr. Richard A. Kosenski, P.E., Township of Middletown Sewerage Authority Engineer, Box 205, Center Avenue, Belford, New Jersey 07718. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by Department with respect to the amendment request.

Any interested person may request in writing that Department hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Dr. Van Abs at the Department address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

HEALTH

(b)

THE COMMISSIONER

Notice of Invitation for Certificate of Need Applications

Specialized Long-Term Care Beds for Ventilator Care for Adult Patients in LAB IV Region

Take notice that, in accordance with the provisions of N.J.A.C. 8:33-4.1(a), Len Fishman, Commissioner, New Jersey Department of Health, is inviting certificate of need applications which will propose to meet the identified need of 15 specialized long-term care beds for ventilator care for adult patients in the Local Advisory Board (LAB) IV region.

Certificate of need applications shall be filed in accordance with the Certificate of Need Application and Review Process, N.J.A.C. 8:33, and shall be in compliance with the applicable health planning rules, N.J.A.C. 8:33H, and applicable licensing rules. A certificate of need application which requests beds in excess of the identified need referenced above will be determined to be unresponsive to this notice and not accepted for processing in accordance with N.J.A.C. 8:33-4.5(b).

Geographic area to be served: Local Advisory Board IV Region.

Date application is due: July 10, 1995.

Date completeness review decision issued: September 11, 1995.

Date local advisory boards will review the applications and submit recommendations to the Commissioner and the State Health Planning Board: On or before October 26, 1995.

Date State Health Planning Board will review the applications and submit recommendations to the Commissioner: On or before December 11, 1995.

Applications may be requested from and must be filed with:

Health Resources Certification Program
New Jersey State Department of Health
CN 360
Trenton, NJ 08625-0360
609-292-6552

Applications must also be filed with: All affected local advisory board(s).

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HUMAN SERVICES

(a)

NEW JERSEY DEVELOPMENTAL DISABILITIES COUNCIL

Notice of State Plan Public Comment Period

Take notice that the State Plan document describing the Council's planned activities for the Federal fiscal year beginning October 1, 1995, will be available for public comment from July 1 through July 15, 1995. To receive a copy of the State Plan draft, please write: Rachel A. Hickson, Planner, New Jersey DD Council, CN 700, Trenton, NJ 08625-0700.

(b)

OFFICE OF PUBLIC AFFAIRS

Notice of Availability of Grant Funds
New Jersey Sows the Seeds for Growth: A Project for Child Care and Early Education Professional Development

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services hereby announced the availability of the following grant program funds.

A. Name of program: New Jersey Sows the Seeds for Growth: A Project for Child Care and Early Education Professional Development; abbr. "Sows the Seeds."

B. Purpose: The project will develop a plan for the professional growth and career development of persons working in the field of child care and early education in New Jersey. The grant will fund the work leading to the plan.

C. Amount of available funding for the program: $120,000.

D. Organizations which may apply for funding under this program: Eligible applicants include private organizations with a 501(c)(3) Federal tax determination letter and public agencies. A combination of agencies and organizations may submit a cooperative proposal, in which case the grant will be awarded to a single designated group.

E. Qualifications needed by an applicant to be considered for funding:

a. Description of implementation process based on full project proposal;

b. Evidence of sound fiscal management, including the most recent CPA audit and a detailed proposed budget;

c. Evidence of experience in managing child care and early education planning, especially of professional development projects, including letters of support from related community agencies;

d. Evidence of ability to prepare and produce a final written report; and

e. Evidence of ability to create a collaborative effort among the participants in the project.

F. Procedure for eligible organizations to apply: Agencies and organizations interested in applying for these funds may obtain a copy of the Request for Proposals (RFP) by attending the Bidder's Conference. **To obtain a copy prior to the Bidders' Conference, contact Edna Ranck, Child Care Coordinator, NJ Department of Human Services, CN 700, Trenton, NJ 08625-0700, Tel. (609) 984-0879.** It is a prerequisite and a requirement that prospective applicants attend the Bidders' Conference. Any person with a physical disability who plans to attend this meeting and requires any special accommodations should contact Edna Ranck at (609) 984-0879.

The Department reserves the right to reject any and all proposals when circumstances indicate that it is in its best interest to do so. The Department's best interests include, but are not limited to: loss of funding, inability of the applicant to provide adequate services, an indication of misrepresentation of information, and/or non-compliance with State and Federal laws and regulations.

The Department reserves the right to base the final contract on the total amount of funds available at the time of contract negotiations.

The Department assumes no responsibility or liability for the costs incurred by an applicant for planning or preparing a proposal in response to this announcement.

A Bidder's Conference is scheduled for:

Date: Wednesday, June 28, 1995
Time: 10:00 A.M.
Location: Forrestal Training Center, Room No. will be posted, 600 College Road East, Princeton, NJ.

Failure to attend the Bidder's Conference will disqualify agencies and organizations from the application process. Those who attend this conference must confirm their attendance by registering at the conference site.

The Bidder's Conference will provide an opportunity for DHS to clarify the contents of the RFP, answer any questions, and provide technical information regarding the RFP.

G. Submission address: One signed original and four (4) copies of the completed proposal shall be mailed or hand-delivered (no facsimiles) to:

New Jersey Department of Human Services
Office of Public Affairs
c/o Edna Ranck, Child Care Coordinator
222 S. Warren Street, Fifth Floor, CN 700
Trenton, NJ 08625-0700
(609) 984-0879

H. Deadline: Whether mailed or hand-delivered, **applications must be received in Trenton** before 4:00 P.M. on Monday, July 17, 1995. The envelope must indicate: Proposal Enclosed.

I. Award notification to be made by Monday, August 7, 1995.

INSURANCE

(c)

OFFICE OF THE COMMISSIONER

Health Wellness Promotion Act
Notice of Mandated Adjustments to Benefit Payments and Value for Services Schedules

Take notice that the Commissioner of Insurance, in compliance with the Health Wellness Promotion Act, P.L. 1993, c.327, (the "Act") hereby adjusts the benefit payments and value of services' schedules, called for in contracts, policies or in the value of services, offered pursuant to the Act, by hospital, medical and health service corporations, health insurers and health maintenance organizations as follows:

To and in an amount or value for services which shall not exceed: $128.00 a year for each person between the ages of 20 to 39 inclusive; $148.00 a year for each man age 40 and over; and $241.00 a year for each woman age 40 and over; except that for persons 45 years of age or older, the cost or value for services for a left-sided colon examination shall not be included in the above amount; however, no Hospital, Medical and Health Service Corporation, Health Insurer or Health Maintenance Organization shall be required to provide payment or services of a value for a left-sided colon examination in excess of $154.00.

These adjustments are based on an average 2.4 percent increase, from December 1993 to December 1994, in the Consumer Price Index for all urban consumers in the New York City and Philadelphia areas as reported by the Department of Labor and take effect July 1, 1995.

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(a)

DIVISION OF ADMINISTRATION

Notice of Action on Petition for Rulemaking Medical Fee Schedules: Automobile Insurance Personal Injury Protection and Motor Bus Medical Expense Insurance Coverage

N.J.A.C. 11:3-29.6

Petitioners: New Jersey Dental Association and Henry W. Finger, D.D.S.

Authority: N.J.S.A. 52:14B-4(f); N.J.A.C. 1:30-3.6 and 11:1-15.

Take notice that on April 17, 1995, the Department of Insurance (Department) received a petition for rulemaking from the New Jersey Dental Association and Henry W. Finger, D.D.S., requesting that the Department amend the Medical Fee Schedule for dental services set forth at N.J.A.C. 11:3-29.6(b) by substantially increasing the fees. A notice acknowledging receipt of the petition and summarizing its contents was filed with the Office of Administrative Law on April 24, 1995 and appeared in the May 15, 1995 issue of the New Jersey Register. (see 27 N.J.R. 2015(a)).

The Commissioner certifies that the petition was duly considered pursuant to law and, upon due deliberation, has determined that the Department should consider amendments to the fee schedule for dental services.

Accordingly, the matter is referred for further deliberations, including, but not limited to, further collection and evaluation of pertinent data, and will conclude on or before August 21, 1995. The results of these further deliberations will be mailed to the petitioners and submitted to the OAL for publication in the New Jersey Register.

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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the May 1, 1995 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1995 d.1 means the first rule filed for 1995.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT APRIL 17, 1995

NEXT UPDATE: SUPPLEMENT MAY 15, 1995

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between	Then the rule proposal or adoption appears in this issue of the Register
26 N.J.R. 2511 and 2692	June 20, 1994	27 N.J.R. 1 and 262	January 3, 1995
26 N.J.R. 2693 and 2828	July 5, 1994	27 N.J.R. 263 and 410	January 17, 1995
26 N.J.R. 2829 and 3102	July 18, 1994	27 N.J.R. 411 and 606	February 6, 1995
26 N.J.R. 3103 and 3230	August 1, 1994	27 N.J.R. 607 and 790	February 21, 1995
26 N.J.R. 3231 and 3504	August 15, 1994	27 N.J.R. 791 and 966	March 6, 1995
26 N.J.R. 3505 and 3780	September 6, 1994	27 N.J.R. 967 and 1336	March 20, 1995
26 N.J.R. 3781 and 3916	September 19, 1994	27 N.J.R. 1337 and 1502	April 3, 1995
26 N.J.R. 3917 and 4120	October 3, 1994	27 N.J.R. 1503 and 1712	April 17, 1995
26 N.J.R. 4121 and 4244	October 17, 1994	27 N.J.R. 1713 and 1832	May 1, 1995
26 N.J.R. 4245 and 4470	November 7, 1994	27 N.J.R. 1833 and 2028	May 15, 1995
26 N.J.R. 4471 and 4720	November 21, 1994	27 N.J.R. 2029 and 2292	June 5, 1995
26 N.J.R. 4721 and 4856	December 5, 1994	27 N.J.R. 2293 and 2506	June 19, 1995
26 N.J.R. 4857 and 5138	December 19, 1994		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.2, 14.10, 14.14	Conduct of contested cases: fines for misconduct	27 N.J.R. 609(a)		
1:1-17.2	Motions to consolidate; copies	27 N.J.R. 2033(a)		
1:1-19.1	Settlements	27 N.J.R. 1343(a)	R.1995 d.300	27 N.J.R. 2383(a)
1:7A-1.1, 8.1	Department of Environmental Protection Cases: public hearing and extension of comment period	26 N.J.R. 4863(a)		
1:30-1.2, 3.1, 4.1	Agency rulemaking: Federal standards	27 N.J.R. 414(a)		
1:30-1.9	Agency rulemaking: document copying fees	27 N.J.R. 416(a)		
Most recent update to Title 1: TRANSMITTAL 1995-2 (supplement April 17, 1995)				
AGRICULTURE—TITLE 2				
2:32-2.22	Sire Stakes Program: qualifying standards	27 N.J.R. 969(a)	R.1995 d.276	27 N.J.R. 2179(a)
2:33	Agricultural fairs	27 N.J.R. 610(a)	R.1995 d.226	27 N.J.R. 1791(a)
2:48	Dairy industry: general provisions	27 N.J.R. 2033(b)		
2:52	Milk processors, dealers and subdealers	27 N.J.R. 1343(a)	R.1995 d.325	27 N.J.R. 2383(b)
2:69-1.11	Commercial values of primary plant nutrients	27 N.J.R. 1344(a)	R.1995 d.326	27 N.J.R. 2383(c)
2:70	Agricultural liming materials	27 N.J.R. 2034(a)		
2:71-2.28, 2.29, 2.30, 2.32	Fruits and vegetables: fees for inspection and grading	27 N.J.R. 2035(a)		
2:76-3.3, 3.5, 3.6, 3.9, 3.10, 3.12	Creation of farmland preservation programs	27 N.J.R. 8(a)		
2:76-4.3, 4.5, 4.6, 4.9, 4.11	Creation of municipally approved farmland preservation programs	27 N.J.R. 10(a)		
2:76-6.2, 6.5, 6.6, 6.7, 6.9–6.18B	Acquisition of development easements	27 N.J.R. 13(a)		
2:90	State Soil Conservation Committee: soil erosion and sediment control; farmland preservation project cost-sharing	27 N.J.R. 1506(a)		
2:90-2.24, 2.25	Farmland Preservation Program: agrichemical handling facility	27 N.J.R. 1836(a)		
Most recent update to Title 2: TRANSMITTAL 1995-3 (supplement April 17, 1995)				
BANKING—TITLE 3				
3:2	Advertising by banking institutions	27 N.J.R. 1715(a)		
3:2-1.2, 1.3, 1.4	Disclosures and advertising of accounts	27 N.J.R. 793(a)		
3:3-1	Mission statement of Department of Banking	Exempt	R.1995 d.272	27 N.J.R. 2179(b)
3:7-4	Disclosures and advertising of accounts	27 N.J.R. 793(a)		
3:11-7.8	Lending limitations of banks	27 N.J.R. 794(a)	R.1995 d.245	27 N.J.R. 1967(a)
3:16	Pawnbroking regulation	27 N.J.R. 2036(a)		
3:38-1.9	Branch office fee for mortgage bankers and brokers	27 N.J.R. 1507(a)	R.1995 d.317	27 N.J.R. 2384(a)
3:38-1.11, 2.1	Mortgage bankers and brokers: notice of termination of funding	27 N.J.R. 611(a)		
3:41-5.1, 6.1	New Jersey Cemetery Board: monuments	27 N.J.R. 1507(b)		
Most recent update to Title 3: TRANSMITTAL 1995-3 (supplement April 17, 1995)				

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
CIVIL SERVICE—TITLE 4				
Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)				
PERSONNEL—TITLE 4A				
4A:2-2.3	Drug and alcohol testing	27 N.J.R. 1837(a)		
4A:2-2.8	Major discipline appeals	27 N.J.R. 1837(b)		
4A:2-2.9	Merit System Board hearings	27 N.J.R. 1838(a)		
4A:2-3.1	Performance evaluations	26 N.J.R. 3509(a)		
4A:4-7.10	Regular reemployment	27 N.J.R. 1839(a)		
4A:6-1.20	Leave to appear as a witness	27 N.J.R. 1839(b)		
4A:6-5.3	Performance evaluations	26 N.J.R. 3509(a)		
4A:8	Layoffs	27 N.J.R. 482(a)		
4A:8	Layoffs	27 N.J.R. 612(a)	R.1995 d.251	27 N.J.R. 1967(b)
4A:8-2.2	Employee layoff rights: administrative change regarding exercise of lateral and demotional rights	_____	_____	27 N.J.R. 2384(b)
Most recent update to Title 4A: TRANSMITTAL 1995-2 (supplement February 21, 1995)				
COMMUNITY AFFAIRS—TITLE 5				
5:2-2	Petitions for rules	27 N.J.R. 1715(b)		
5:10-1.10	Maintenance of hotels and multiple dwellings: inspections	27 N.J.R. 1345(a)	R.1995 d.279	27 N.J.R. 2181(a)
5:10A	Proprietary campground facilities	27 N.J.R. 1840(a)		
5:11-2.1, 3.7, 9.1, 9.2	Relocation assistance: eligibility of owner-occupants in code enforcement cases	27 N.J.R. 1844(a)		
5:14-1.4, 3.4–3.7, App. B, C, D, E	Neighborhood Preservation Balanced Housing Program	27 N.J.R. 1508(a)	R.1995 d.339	27 N.J.R. 2385(a)
5:16	Local Housing Authority and Municipal Redevelopment Agency Training Program	26 N.J.R. 4867(a)	R.1995 d.259	27 N.J.R. 2182(a)
5:17	Lead Hazard Evaluation and Abatement Code	27 N.J.R. 970(a)		
5:18-2.11A	Construction boards of appeal: UCC and Fire Code appeals	26 N.J.R. 4254(b)		
5:18-2.12, 2.21, App. 3-A	Uniform Fire Code: cigarette lighters	26 N.J.R. 2182(b)		
5:18C-6	Fire service training and certification: hazardous materials and incident command certifications	27 N.J.R. 1845(a)		
5:18-4.19	Uniform Fire Code: administrative change regarding smoke detectors for one and two-family dwellings	_____	_____	27 N.J.R. 2387(a)
5:22-1	Urban enterprise zone municipalities: exemptions from taxation for residential new construction, improvement and conversion	27 N.J.R. 794(b)	R.1995 d.256	27 N.J.R. 1977(a)
5:23-1.4, 2.4, 2.7, 2.14, 2.15, 2.17A, 2.23, 4.18, 4.20	Lead Hazard Evaluation and Abatement Code	27 N.J.R. 970(a)		
5:23-2.9, 2.34–2.37, 4.40	Construction boards of appeal: UCC and Fire Code appeals	26 N.J.R. 4254(b)		
5:23-2.14, 4.18, 4.20	Uniform Construction Code: training for annual permit holders	27 N.J.R. 1716(a)		
5:23-2.17A, 2.23, 2.24, 4.18, 4.20, 12.3, 12.4, 12.9	Uniform Construction Code: certificates of approval and compliance; fees	27 N.J.R. 1846(a)		
5:23-3.9	Uniform Construction Code Element: issuance of bulletins	27 N.J.R. 1512(a)	R.1995 d.340	27 N.J.R. 2388(a)
5:23-3.14	Uniform Construction Code: building subcode	27 N.J.R. 1717(a)		
5:23-2.20, 4.5	Uniform Construction Code: heating equipment installation	27 N.J.R. 619(a)	R.1995 d.249	27 N.J.R. 2187(a)
5:24	Condominium, fee simple and cooperative conversion and mobile home park retirement	27 N.J.R. 1718(a)		
5:27	Rooming and boarding houses	27 N.J.R. 1346(a)	R.1995 d.280	27 N.J.R. 2188(a)
5:28	State Housing Code	27 N.J.R. 1850(a)		
5:33	Local Finance Board: tax collection administration	27 N.J.R. 2132(a)		
5:71	County offices on aging	27 N.J.R. 1719(a)		
5:80	New Jersey Housing and Mortgage Finance Agency rules	27 N.J.R. 265(a)	R.1995 d.247	27 N.J.R. 1977(b)
5:80-33	Housing and Mortgage Finance Agency: low income housing tax credit qualified allocation plan	27 N.J.R. 986(a)	R.1995 d.281	27 N.J.R. 2190(a)
5:91	Council on Affordable Housing: procedural rules	27 N.J.R. 2134(a)		
5:93	Council on Affordable Housing: substantive rules	27 N.J.R. 2134(a)		
5:100	Office of the Ombudsman for the Institutionalized Elderly: practice and procedure	27 N.J.R. 1348(a)	R.1995 d.336	27 N.J.R. 2388(b)
Most recent update to Title 5: TRANSMITTAL 1995-4 (supplement April 17, 1995)				
MILITARY AND VETERANS' AFFAIRS—TITLE 5A				
Most recent update to Title 5A: TRANSMITTAL 1994-1 (supplement June 20, 1994)				
EDUCATION—TITLE 6				
6:3A	District equivalency and waiver process	27 N.J.R. 1377(a)		
6:11-3.2	Certification fees	27 N.J.R. 1380(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:28-2.10, 4.2	Special Education: least restrictive environment; program options	27 N.J.R. 416(c)	R.1995 d.228	27 N.J.R. 1792(a)
6:68	State Library assistance programs	27 N.J.R. 620(a)	R.1995 d.290	27 N.J.R. 2202(a)

Most recent update to Title 6: TRANSMITTAL 1995-1 (supplement March 20, 1995)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1C	Ninety-day construction permits	27 N.J.R. 998(a)		
7:7-1.3, 2.1, 2.2, 2.3, 4.2, 4.4–4.7, 4.10, 5.1, 7.1–7.4, App.	Coastal Permit Program	27 N.J.R. 1005(a)		
7:7A-7.4, 9.2	Freshwater wetlands protection: Statewide general permit and special activity waiver for single-family dwelling	27 N.J.R. 1851(a)		
7:7E	Coastal zone management	27 N.J.R. 417(a)		
7:11-2.2, 2.3, 2.4, 2.10, 2.12	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System: sale of water	26 N.J.R. 4907(a)	R.1995 d.291	27 N.J.R. 2205(a)
7:11-4.3, 4.4, 4.9, 4.13	Manasquan Reservoir Water Supply System: sale of water	26 N.J.R. 4910(a)	R.1995 d.292	27 N.J.R. 2207(a)
7:13-3.6	Flood hazard area control: administrative corrections regarding projects affecting other fish resources	_____	_____	27 N.J.R. 2389(a)
7:13-7.1	Flood plain redelineation of Sparkill Brook within Rockleigh Borough, Bergen County	27 N.J.R. 1854(a)		
7:13-7.1	Flood plain redelineation of the East Branch Rahway River in Union County	27 N.J.R. 1855(a)		
7:14A	NJPDES permitting program: waiver of Executive Order No. 66(1978) expiration date	_____	_____	27 N.J.R. 2390(a)
7:14A-1.8	NJPDES permit fees	27 N.J.R. 1028(a)		
7:14A-1.9, 2.1, 2.5, 2.14, 3.1, 3.8, 3.9, 3.12, App. A, B; 10.3, 14.8, App. H	Statewide Stormwater Permitting Program	27 N.J.R. 1857(a)		
7:14B-1.4	Underground storage tanks: administrative correction regarding applicability of rules	_____	_____	27 N.J.R. 1978(a)
7:20	Dam safety standards	27 N.J.R. 795(a)	R.1995 d.266	27 N.J.R. 2210(a)
7:22	Financial assistance programs for wastewater treatment facilities	27 N.J.R. 1536(a)		
7:25-2	Use of land and water areas under control of Division of Fish, Game and Wildlife	27 N.J.R. 1890(a)		
7:25-4.18	Endangered and Nongame Species Advisory Committee: term limitations requirement	27 N.J.R. 797(a)		
7:25-5	1995-96 Game Code	27 N.J.R. 1897(a)		
7:25-18.1	Recreational summer flounder season: administrative change	_____	_____	27 N.J.R. 1793(a)
7:25-18.5	Lobster and fish pots: administrative correction regarding escape vents	_____	_____	27 N.J.R. 2212(a)
7:25-18.5, 18.12, 18.14	Marine fisheries: administrative corrections	_____	_____	27 N.J.R. 1794(a)
7:25-18.14	Commercial winter flounder season: administrative change	_____	_____	27 N.J.R. 2390(b)
7:25A	Oyster management and harvest	27 N.J.R. 798(a)	R.1995 d.250	27 N.J.R. 1979(a)
7:26-1.4, 3.4, 3.6, 4.3, 4.7	Solid waste management: intermodal container facilities	27 N.J.R. 801(a)		
7:27-15	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27-16.1, 16.4, 16.8, 16.9, 16.10, 16.17, 16.18	Control and prohibition of air pollution by volatile organic compounds	26 N.J.R. 4478(a)	R.1995 d.255	27 N.J.R. 1979(b)
7:27-22	Air pollution control: facility operating permits	27 N.J.R. 1040(a)		
7:27-22.1, 22.31	Air Quality Regulation Program: facility operating permit fees	27 N.J.R. 22(b)		
7:27-24	Volatile organic compounds: control and prohibition from consumer and commercial products	27 N.J.R. 1077(a)		
7:27-25.1, 25.3, 25.4, 25.8	Oxygenated fuels program	27 N.J.R. 787(a)	R.1995 d.236	27 N.J.R. 1794(b)
7:27-25.3	Oxygen program exemptions	26 N.J.R. 3835(a)		
7:27-26	Ozone Transport Commission—Low Emission Vehicles Program	27 N.J.R. 1910(a)		
7:27-27.4, 27.9	Control and prohibition of mercury emissions	27 N.J.R. 2038(a)		
7:27A-3.10	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27A-3.10	Air pollution civil administrative penalties: administrative correction	_____	_____	27 N.J.R. 2212(b)
7:27A-3.10	Control and prohibition of mercury emissions: civil administrative penalties	27 N.J.R. 2038(a)		
7:27B-4	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:28	Radiation protection	26 N.J.R. 4942(a)		

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7:28-48.7	Registration fees for non-ionizing radiation producing sources: administrative correction	27 N.J.R. 498(b)		
7:29	Noise control	27 N.J.R. 1091(a)	R.1995 d.302	27 N.J.R. 2390(c)
7:50-2.11, 3, 4, 5, 6.23, 6.84, 6.156, 7.3	Pinelands Comprehensive Management Plan revisions	27 N.J.R. 1557(a)		
7:50-2.11, 3, 4, 5, 6.23, 6.84, 6.156, 7.3	Pinelands Comprehensive Management Plan: rescheduled and relocated public hearing and extension of comment period regarding proposed revisions	27 N.J.R. 1927(a)		
7:50-6 App. A	Pinelands Septic Dilution Model: administrative correction	_____	_____	27 N.J.R. 2212(c)
7:50-9	Pinelands Comprehensive Management Plan: acquisition of properties with limited practical use	27 N.J.R. 1572(a)		
7:50-9	Pinelands Comprehensive Management Plan: rescheduled and relocated public hearing and extension of comment period regarding acquisition of properties of limited practical use	27 N.J.R. 1927(b)		
7:61-2.5	Board of Commissioners of Pilotage: qualifications of applicants for apprenticeship	27 N.J.R. 2041(a)		
7:62	Landscape irrigation contractors	27 N.J.R. 1098(a)		

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8:1-1	Disability discrimination grievance procedure	26 N.J.R. 2005(a)	R.1995 d.301	27 N.J.R. 2394(a)
8:7-1.11–1.18	Licensure of persons for public health positions	27 N.J.R. 267(a)		
8:19	Newborn Screening Program	27 N.J.R. 807(a)	R.1995 d.274	27 N.J.R. 2213(a)
8:31B	Hospital financing	27 N.J.R. 2148(a)		
8:33H-1.3	Long-term care alternatives: "window of opportunity" for Certificate of Need review of assisted living residences and comprehensive personal care homes	27 N.J.R. 2154(a)		
8:33P	Designation of Level I and II trauma centers: certificate of need requirements	27 N.J.R. 1350(a)	R.1995 d.328	27 N.J.R. 2396(a)
8:39-43.1	Nurse aide in long-term care facilities: training and competency evaluation program fees	27 N.J.R. 2155(a)		
8:41-8.1, 10.1	Approved drug formulary for mobile intensive care units	27 N.J.R. 808(a)		
8:43G-5.2	Hospital licensing standards: administrative correction regarding smoke-free policy	_____	_____	27 N.J.R. 2215(a)
8:43G-6.3	Hospital licensing standards: administrative correction regarding anesthesia administration	_____	_____	27 N.J.R. 1800(a)
8:44	Operation of clinical laboratories	27 N.J.R. 626(a)	R.1995 d.239	27 N.J.R. 1985(a)
8:57	Communicable diseases	27 N.J.R. 420(a)	R.1995 d.240	27 N.J.R. 1987(a)
8:57-1	Reportable communicable diseases	27 N.J.R. 1987(a)	R.1995 d.277	27 N.J.R. 2216(a)
8:57-4.13	Rubella vaccination of children: administrative correction	_____	_____	27 N.J.R. 1801(a)
8:57-5	Confinement of persons with tuberculosis	26 N.J.R. 3236(a)		
8:57-5	Confinement of persons with tuberculosis: public hearing	26 N.J.R. 3574(a)		
8:57A	Cancer Registry	27 N.J.R. 629(a)	R.1995 d.241	27 N.J.R. 1988(a)
8:60-2.1	Asbestos licenses and permits: administrative corrections	_____	_____	27 N.J.R. 1806(a)
8:71	List of Interchangeable Drug Products (see 26 N.J.R. 1348(a), 2096(a))	26 N.J.R. 13(b)	R.1994 d.456	26 N.J.R. 3716(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 14(a)	R.1994 d.244	26 N.J.R. 2039(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 69(a)	R.1994 d.243	26 N.J.R. 2028(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2025(b), 2901(a), 3715(b), 4387(a))	26 N.J.R. 1190(b)	R.1995 d.31	27 N.J.R. 355(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2897(a), 3719(a), 4388(a))	26 N.J.R. 1821(a)	R.1995 d.33	27 N.J.R. 357(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2898(a), 3717(b), 4388(b), 27 N.J.R. 355(b))	26 N.J.R. 1822(a)	R.1995 d.178	27 N.J.R. 1300(a)
8:71	Interchangeable drug products (see 26 N.J.R. 3720(a), 4386(a))	26 N.J.R. 2723(a)	R.1995 d.35	27 N.J.R. 359(a)
8:71	Interchangeable drug products (see 26 N.J.R. 4390(a), 27 N.J.R. 357(b))	26 N.J.R. 3583(a)	R.1995 d.179	27 N.J.R. 1302(a)
8:71	Interchangeable drug products	26 N.J.R. 4288(a)	R.1995 d.39	27 N.J.R. 351(b)
8:71	Interchangeable drug products	26 N.J.R. 4293(a)	R.1995 d.30	27 N.J.R. 354(a)
8:71	Interchangeable drug products (see 27 N.J.R. 351(c))	26 N.J.R. 4294(a)	R.1995 d.180	27 N.J.R. 1303(a)
8:71	Interchangeable drug products	27 N.J.R. 30(a)	R.1995 d.177	27 N.J.R. 1305(a)
8:71	Interchangeable drug products	27 N.J.R. 810(a)		
8:71	Interchangeable drug products	27 N.J.R. 1723(a)		

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9:1	Licensing standards	27 N.J.R. 1381(b)	R.1995 d.333	27 N.J.R. 2396(b)
9:4-1.9, 5, 6, 7	County community colleges: policies and procedures	27 N.J.R. 1387(a)		
9:4-1.9, 5, 6, 7	Community colleges: policies and procedures (recodify as 9A:7-1.1, 2, 3, 4)	27 N.J.R. 1388(a)	R.1995 d.334	27 N.J.R. 2400(a)

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9:5-1	Repeal (see 9A:5)	27 N.J.R. 1727(a)		
9:6	State colleges	27 N.J.R. 1392(a)		
9:6	State colleges	27 N.J.R. 1395(a)	R.1995 d.335	27 N.J.R. 2403(a)
9:6A	State college personnel	27 N.J.R. 1392(a)		
9:6A	State college personnel (recodify as 9A:6)	27 N.J.R. 1395(a)	R.1995 d.335	27 N.J.R. 2403(a)
9:7-2.6, 2.10, 3.3	Student Assistance Board: Garden State Scholarship and Tuition Aid Grant programs	27 N.J.R. 2043(a)		
9:11	EOF Program (recodify as 9A:11)	27 N.J.R. 812(a)	R.1995 d.248	27 N.J.R. 1993(a)
9:12	EOF Program (recodify as 9A:12)	27 N.J.R. 812(a)	R.1995 d.248	27 N.J.R. 1993(a)
9A:5	Tuition residency requirements	27 N.J.R. 1727(a)		
9A:11	Educational Opportunity Fund Program	27 N.J.R. 812(a)	R.1995 d.248	27 N.J.R. 1993(a)
9A:12	Educational Opportunity Fund Program	27 N.J.R. 812(a)	R.1995 d.248	27 N.J.R. 1993(a)

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10:15-2.4	Child Care Services Manual: submitting vouchers for payment	27 N.J.R. 1928(a)		
10:15A-1.4	Child Care Services Manual: submitting vouchers for payment	27 N.J.R. 1928(a)		
10:19	Manual of Standards for Juvenile Detention Facilities	27 N.J.R. 1101(a)	R.1995 d.293	27 N.J.R. 2221(a)
10:37-5.28–5.34	Repeal (see 10:37E)	26 N.J.R. 3608(a)		
10:37-5.46–5.51	Repeal (see 10:37F)	26 N.J.R. 4547(a)		
10:37E	Division of Mental Health and Hospitals: outpatient service standards	26 N.J.R. 3608(a)		
10:37F	Adult Partial Care Services for individuals with severe and persistent mental illness	26 N.J.R. 4547(a)		
10:37G	Division of Mental Health and Hospitals: client liaison services	27 N.J.R. 429(a)		
10:46	Division of Developmental Disabilities: determination of eligibility for services	27 N.J.R. 2157(a)		
10:49-7.3	Medicaid program: third party liability benefits	27 N.J.R. 1512(b)		
10:49-14.4	Medical assistance recoveries involving county welfare agencies	26 N.J.R. 3348(a)	R.1995 d.105	27 N.J.R. 2466(a)
10:49-19	Repeal (see 10:74)	27 N.J.R. 853(a)	R.1995 d.337	27 N.J.R. 2466(b)
10:51-1.11, 1.12	Pharmaceutical Services Manual: Medicaid coverage of non-legend drugs provided to children and adolescents	27 N.J.R. 1104(a)		
10:51-1.12, 2.11, 4.13	Medicaid and PAAD programs: unit-dose-packaged drugs	26 N.J.R. 3349(a)		
10:52-1.1, 8.2	Hospital Services Manual: pre-proposal regarding Hospital Relief Subsidy Fund methodology	27 N.J.R. 1929(a)		
10:52-10	Manual for Hospital Services: charity care eligibility	27 N.J.R. 656(a)	R.1995 d.258	27 N.J.R. 1995(a)
10:58A	Medicaid program: certified nurse practitioner and clinical nurse specialist services	27 N.J.R. 2158(a)		
10:59-1.9	Medical Supplier Manual: reimbursement for certain services	26 N.J.R. 2839(a)		
10:60-1.1, 1.2, 1.4, 1.13, 4.2	Home Care Services: EPSDT private duty nursing services	27 N.J.R. 279(a)		
10:64-1.3	Hearing Aid Services: optional audiological examinations	27 N.J.R. 287(a)		
10:74	Managed health care services for Medicaid eligibles	27 N.J.R. 853(a)	R.1995 d.337	27 N.J.R. 2466(b)
10:81-11.9	Public Assistance Manual: $50 disregarded child support payment	26 N.J.R. 1937(a)	R.1995 d.271	27 N.J.R. 2223(a)
10:81-14.18	Public Assistance Manual: submitting vouchers for payment	27 N.J.R. 1929(b)		
10:85-3.1, 3.2, 3.3, 3.5, 5.1, 5.2, 5.7	General Assistance program: general nursing facility assistance	27 N.J.R. 1105(a)		
10:85-3.2	General Assistance program: fingerimaging procedures	27 N.J.R. 864(a)		
10:86-10.3	Family Development Program Manual: submitting vouchers for payment	27 N.J.R. 1930(a)		
10:88	Families First Program	27 N.J.R. 1110(a)	R.1995 d.294	27 N.J.R. 2223(b)
10:89-2.3, 3.1	Home Energy Assistance program: income eligibility; automatic payments	27 N.J.R. 942(a)	R.1995 d.246	27 N.J.R. 2003(a)
10:91	Commission for the Blind and Visually Impaired: organization and general policy	27 N.J.R. 1931(a)		
10:121	Division Youth and Family Services: standards regarding adoptions	27 N.J.R. 1122(a)		
10:121A-1.5, 1.6, 1.7, 1.8, 3.3, 3.5, 3.6, 4.2, 4.4, 5.3, 5.4, 5.6, 5.8, 5.9	Division of Youth and Family Services: Manual of Requirements for Adoption Agencies	27 N.J.R. 661(a)		
10:123	Social Services Program for Individuals and Families	27 N.J.R. 1123(a)		
10:125	Division of Youth and Family Services: capital funding program for community-based facilities	27 N.J.R. 431(a)	R.1995 d.260	27 N.J.R. 2232(a)
10:126-1.2, 1.3, 2.4, 4.6, 5.3, 5.7, 5.8	Family day care provider registration: child abuse central registry searches; registration denial appeal process	27 N.J.R. 1351(a)		
10:126A	Division of Youth and Family Services: utilization of family day care providers	27 N.J.R. 432(a)	R.1995 d.227	27 N.J.R. 1801(b)

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10:129	Division of Youth and Family Services: child abuse and neglect cases	27 N.J.R. 1125(a)		
10:129A	Child protective services investigations and determinations of abuse and neglect	26 N.J.R. 3700(a)		
10:130	Shelters for victims of domestic violence: standards	27 N.J.R. 1126(a)	R.1995 d.311	27 N.J.R. 2487(a)
10:133F	Division of Youth and Family Services: collection of support monies and government benefits	27 N.J.R. 865(a)		
10:133G	Division of Youth and Family Services: client information	27 N.J.R. 38(a)		
10:133I	Division of Youth and Family Services: reasonable efforts; reasonable and diligent efforts; necessary activities to achieve a case goal	27 N.J.R. 433(a)		

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10A:3-6.7	Unauthorized money or currency found in inmate's possession	27 N.J.R. 1945(a)		
10A:4-4.1	Inmate prohibited acts: refusal to register as sex offender	27 N.J.R. 436(a)	R.1995 d.237	27 N.J.R. 1801(c)
10A:31	Adult county correctional facilities	27 N.J.R. 1728(a)		
10A:32	Manual of Standards for Juvenile Detention Facilities (recodify as 10:19)	27 N.J.R. 1101(a)		
10A:71-3.21	State Parole Board: future parole eligibility terms	27 N.J.R. 288(a)		

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11:1-10.4	Admission requirements for foreign and alien property and casualty insurers	27 N.J.R. 1737(a)		
11:1-38	Oversight of firemen's relief associations	27 N.J.R. 634(a)		
11:1-39	Insurer disclosure of material transactions	27 N.J.R. 816(a)	R.1995 d.234	27 N.J.R. 1802(a)
11:3-9.2, 34.4, 35.4	Private passenger automobile insurance: eligible persons coverage	27 N.J.R. 2048(a)		
11:3-10.3	Automobile physical damage claims	27 N.J.R. 437(a)		
11:3-15.6	Private passenger automobile insurance: standard minimum premium quotation	27 N.J.R. 1354(a)		
11:3-16.7	Private passenger automobile insurance: rating programs for physical damage coverages	27 N.J.R. 1356(a)	R.1995 d.288	27 N.J.R. 2232(b)
11:3-28.13, 28.16	Unsatisfied Claim and Judgment Fund: insurer's obligation to obtain recovery of paid medical expense benefit claims and paid benefits (UCJ claims)	26 N.J.R. 4595(a)		
11:3-45	Private passenger automobile insurance: annual premium survey	27 N.J.R. 289(a)	R.1995 d.235	27 N.J.R. 1803(a)
11:4-9	Personal lines insurance: prospective loss costs filing procedures	27 N.J.R. 1356(b)		
11:4-18.6	Individual health insurance policy forms: annual filings	27 N.J.R. 1513(a)	R.1995 d.327	27 N.J.R. 2407(a)
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11:10	Dental services plans	27 N.J.R. 1739(a)		
11:13-7.4, 7.5	Commercial lines insurance: exclusions from coverage; refiling of policy forms	26 N.J.R. 3805(b)		
11:15-2	Joint insurance funds for local governmental units	26 N.J.R. 2725(a)		
11:15-2	Joint insurance funds for local governmental units: extension of comment period	26 N.J.R. 3592(a)		
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11:20-3.1	Individual Health Coverage Program: out-network benefits and coinsurance levels	27 N.J.R. 1127(a)		
11:21-2.5	Small Employer Health Benefits Program: Board authorization of assessments and expenditure of program funds	27 N.J.R. 438(a)	R.1995 d.223	27 N.J.R. 1805(a)
11:21-2.5	Small Employer Health Benefits Program: public hearing on Board authorization of assessments and expenditure of program funds	27 N.J.R. 438(b)		
11:21-4.4, Exh. DD	Small Employer Health Benefits Program: policy forms; compliance and variability rider	27 N.J.R. 439(a)	R.1995 d.312	27 N.J.R. 2407(b)
11:21-7.4	Small Employer Health Benefits Program: carriers acting as administrators for small employers	26 N.J.R. 3117(a)		
11:21-17.3, Exh. BB, EE	Small Employer Health Benefits Program: certification of promotional and marketing material	27 N.J.R. 819(a)		

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11:21-19, App. Exh. EE	Small Employer Health Benefits Program: Premium Comparison Survey	27 N.J.R. 1127(b)	R.1995 d.289	27 N.J.R. 2233(a)

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12:15	Unemployment compensation and temporary disability benefits	27 N.J.R. 1946(a)		
12:17-13	Unemployment benefits eligibility of claimants employed by temporary help firms	27 N.J.R. 1948(a)		
12:18 App.	Department of Labor hearings	26 N.J.R. 2174(a)		
12:19	Unemployment Insurance and Disability Insurance Financing: definitions used by Employment Security Agency and for special employment relationships	27 N.J.R. 1518(a)	R.1995 d.318	27 N.J.R. 2408(a)
12:20	Department of Labor hearings	26 N.J.R. 2174(a)		
12:23-8	Workforce Development Partnership Program: reporting requirements for assessment of employment and training programs	27 N.J.R. 1131(a)	R.1995 d.286	27 N.J.R. 2236(a)
12:35	Workfare	27 N.J.R. 1740(a)		
12:61-1.3	Office of Wage and Hour: appeal of wage collection determination	27 N.J.R. 1520(a)	R.1995 d.319	27 N.J.R. 2409(a)
12:100-4.2	Public employee safety and health: administrative correction regarding toxic and hazardous substances	_____	_____	27 N.J.R. 1805(b)
12:102	Field sanitation for seasonal farm workers	27 N.J.R. 1133(a)	R.1995 d.257	27 N.J.R. 2004(a)
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12:195-1.9	Carnival-amusement rides: inspection fees	26 N.J.R. 2520(a)		
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12A:10	Goods and services contracts for small businesses and female and minority businesses	27 N.J.R. 52(a)	R.1995 d.224	27 N.J.R. 1811(b)
12A:10A	Minority and female contractor and subcontractor participation in State construction contracts	27 N.J.R. 54(a)	R.1995 d.225	27 N.J.R. 1814(a)
12A:31	Development Authority for Small Businesses, Minorities' and Women's Enterprises	27 N.J.R. 1953(a)		
12A:80	New Jersey Urban Development Corporation rules	27 N.J.R. 1954(a)		

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13:9-1.1	Housing discrimination	26 N.J.R. 1942(a)	R.1995 d.243	27 N.J.R. 2005(a)
13:13	Division on Civil Rights: discrimination on the basis of handicap	27 N.J.R. 1954(b)		
13:13, 15	Housing discrimination	26 N.J.R. 1942(a)	R.1995 d.243	27 N.J.R. 2005(a)
13:18	Division of Motor Vehicles: implementation of various statutory provisions	27 N.J.R. 637(a)	R.1995 d.218	27 N.J.R. 1806(b)
13:18-11.4	Division of Motor Vehicles: regulatory fees	27 N.J.R. 1521(b)		
13:19-10.3	Division of Motor Vehicles: regulatory fees	27 N.J.R. 1521(b)		
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13:35-2B.2, 2B.13–2B.16, 6.13	Board of Medical Examiners: temporary licensure of physician assistants	27 N.J.R. 1526(a)		
13:35-2B.4	Board of Medical Examiners: physician assistant scope of practice	27 N.J.R. 1956(a)		
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13:35-4.1	Board of Medical Examiners: first assistants in major surgery	27 N.J.R. 1744(a)		
13:35-6.2	Board of Medical Examiners: pronouncement and certification of death	27 N.J.R. 1745(a)		
13:35-6.13	Board of Medical Examiners: extension of comment regarding licensee registration fees and extension of license expiration date	27 N.J.R. 1746(a)		

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13:35-6.19	Board of Medical Examiners: licensee duty to report changes in status	27 N.J.R. 1746(b)		
13:35-11	Board of Medical Examiners: Alternative Resolution Program	27 N.J.R. 1363(a)	R.1995 d.331	27 N.J.R. 2412(a)
13:37-7.11	Board of Nursing: advanced practice areas for certification as nurse practitioner or clinical nurse specialist	27 N.J.R. 2091(a)		
13:38	Board of Optometrists: rules of optometric practice	27 N.J.R. 2092(a)		
13:39-1.2, 6.7, 9.1, 9.7, 10.4, 11.1	Board of Pharmacy: pharmacy technicians	26 N.J.R. 2743(a)		
13:39-11.3, 11.16	Board of Pharmacy: sterile admixture services in retail pharmacies	27 N.J.R. 43(a)	R.1995 d.269	27 N.J.R. 2239(a)
13:40	Board of Professional Engineers and Land Surveyors: rules of profession	27 N.J.R. 1748(a)		
13:40-6.1, 11	Board of Professional Engineers and Land Surveyors: continuing competency requirements for land surveyors	26 N.J.R. 4314(a)	R.1995 d.305	27 N.J.R. 2415(a)
13:41	Board of Professional Planners: rules of practice	27 N.J.R. 1957(a)		
13:42-1.2, 1.3, 1.5, 2.1, 4.5, 7.1, 7.2A, 7.3, 7.5, 7.6, 9.9, 10.16	Board of Psychological Examiners: unlicensed practitioners	26 N.J.R. 4738(a)	R.1995 d.332	27 N.J.R. 2422(a)
13:42-5.1	Board of Psychological Examiners: passing score on licensing examination	27 N.J.R. 1754(a)		
13:44-5.1	Board of Veterinary Medical Examiners: licensure fees	27 N.J.R. 1137(a)	R.1995 d.299	27 N.J.R. 2240(a)
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13:45A-27	Division of Consumer Affairs: licensee duty to cooperate with licensing board or agency	26 N.J.R. 3128(a)		
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13:46-8.14, 8.19	State Athletic Control Board: boxing three knockdown rule; tie rounds	27 N.J.R. 1144(a)		
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13:59	Division of State Police: criminal history record information background checks	27 N.J.R. 2097(a)		
13:59-1	Division of State Police: criminal history record information background checks	27 N.J.R. 2103(a)		
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13:70-9.29, 9.31	Thoroughbred racing: apprenticed jockey weight allowances	27 N.J.R. 643(a)		
13:70-14A.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1955(a)	R.1995 d.295	27 N.J.R. 2243(a)

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13:71-16.5, 16.12	Harness racing: entries; limitations of entries by trainers	27 N.J.R. 466(a)		
13:71-23.1	Harness racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(b)	R.1995 d.296	27 N.J.R. 2244(a)
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13:75-1.5	Violent Crimes Compensation Board: victim counseling referral	27 N.J.R. 307(a)	R.1995 d.216	27 N.J.R. 1808(a)
13:75-1.6	Violent Crimes Compensation Board: eligibility of claims	27 N.J.R. 307(b)	R.1995 d.217	27 N.J.R. 1808(b)
13:75-1.7	Violent Crimes Compensation Board: reimbursement for loss of earnings	27 N.J.R. 1527(a)		
13:75-1.28	Violent Crimes Compensation Board: secondary victim eligibility	27 N.J.R. 1528(a)		
13:82-3.18	Boat Regulation Commission: personal flotation devices requirement on Round Valley Reservoir	27 N.J.R. 1144(b)		
13:82-8.6, 8.13, 8.19, 9.1	Division of Motor Vehicles: regulatory fees	27 N.J.R. 1521(b)		
13:85	Motorcycle Safety Education Program	27 N.J.R. 1145(a)	R.1995 d.273	27 N.J.R. 2244(c)
13:86	Drunk Driving Enforcement Fund	27 N.J.R. 1367(a)		

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14:7	Natural gas pipelines	27 N.J.R. 870(a)	R.1995 d.303	27 N.J.R. 2428(a)
14:8	Railroads (recodify as 16:23)	27 N.J.R. 1155(a)	R.1995 d.278	27 N.J.R. 2247(a)
14:11-8	Natural gas (recodify as 14:7-1)	27 N.J.R. 870(a)	R.1995 d.303	27 N.J.R. 2428(a)
14:13	Electric utility integrated resource planning	27 N.J.R. 1148(a)		
14:18	Cable television	27 N.J.R. 873(a)	R.1995 d.313	27 N.J.R. 2430(a)
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Most recent update to Title 14A: TRANSMITTAL 1995-1 (supplement February 21, 1995)

STATE—TITLE 15

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16:5	Compensation to owners for income loss resulting from harvesting of standing crops	27 N.J.R. 822(a)	R.1995 d.252	27 N.J.R. 2009(a)
16:21	State Aid to Counties and Municipalities: notice of impending expiration	_____	_____	27 N.J.R. 2246(a)
16:22	Urban Revitalization, Special Demonstration and Emergency Projects: notice of impending expiration	_____	_____	27 N.J.R. 2246(a)
16:23	Railroads: track safety and service requirements	27 N.J.R. 1155(a)	R.1995 d.278	27 N.J.R. 2247(a)
16:28-1.1	Speed limit zones along Route 28 in Bridgewater Township	27 N.J.R. 2104(a)		
16:28-1.6	School zone along U.S. 40 in Buena Vista	27 N.J.R. 1528(b)	R.1995 d.320	27 N.J.R. 2431(a)
16:28-1.10	Speed limit zones along U.S. 46, including U.S. 1, 9 and 46, in Morris County	27 N.J.R. 1960(a)		
16:28-1.20	Speed limit zones along U.S. 322 in Harrison Township	27 N.J.R. 2104(b)		
16:28-1.23	Speed limit zones along Route 18 in East Brunswick	27 N.J.R. 2105(a)		
16:28-1.42	Speed limit zones along Route 152 in Somers Point City and Egg Harbor Township	27 N.J.R. 1369(a)	R.1995 d.287	27 N.J.R. 2247(b)
16:28-1.64	Speed limit zone along Grove Street-Haddonfield Road-Route 70 connector ramp in Cherry Hill	27 N.J.R. 468(a)	R.1995 d.219	27 N.J.R. 1808(c)
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16:28-1.82	Speed limit zone along Route 129 in Hamilton Township and Trenton	27 N.J.R. 1764(a)		
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16:28-1.167	School zone along Route 181 in Jefferson Township	27 N.J.R. 1529(a)	R.1995 d.324	27 N.J.R. 2431(b)
16:28A-1.21	Restricted parking and stopping along U.S. 30 in Hammonton	27 N.J.R. 1530(b)	R.1995 d.321	27 N.J.R. 2432(a)
16:28A-1.28	Parking and standing restrictions along U.S. 40 in Woodstown Borough	27 N.J.R. 2108(b)		
16:28A-1.31	Parking and standing restrictions along Route 45 in Woodstown Borough	27 N.J.R. 2106(b)		
16:28A-1.41	Restricted parking and stopping along Route 77 in Bridgeton	27 N.J.R. 1530(a)	R.1995 d.322	27 N.J.R. 2432(b)
16:28A-1.44	No stopping or standing zones along Route 88 in Lakewood	27 N.J.R. 823(a)	R.1995 d.261	27 N.J.R. 2248(a)
16:28A-1.51	Restricted parking and stopping along Route 168 in Audubon Park	27 N.J.R. 1531(a)	R.1995 d.323	27 N.J.R. 2432(c)
16:28A-1.69	Parking restrictions on Route 124 in Springfield	27 N.J.R. 1765(a)		
16:28A-1.108	No stopping or standing zone on U.S. 40-Route 45 in Woodstown Borough	27 N.J.R. 2109(a)		
16:30-1.5	One-way designation along Route 29 in Lambertville	27 N.J.R. 2110(a)		
16:30-3.16	Left turn only lane on U.S. 206 in Lawrence Township	27 N.J.R. 1156(a)	R.1995 d.262	27 N.J.R. 2248(b)
16:30-5.4	Traffic and parking restrictions at DOT Regional 1 Facility	27 N.J.R. 824(a)	R.1995 d.263	27 N.J.R. 2248(c)
16:30-7.3	Bicycle use along Route 55 Freeway in Cumberland, Salem and Gloucester counties	27 N.J.R. 1766(a)		
16:30-10.14	Midblock crosswalk on Route 161 in Clifton	27 N.J.R. 1960(b)		
16:30-10.17	Midblock crosswalk on Route 45 in Salem	27 N.J.R. 1766(b)		
16:30-11.3	Traffic and parking restrictions at I-295 scenic overlook in Hamilton Township	27 N.J.R. 825(a)	R.1995 d.264	27 N.J.R. 2249(a)
16:31-1.22	Turn prohibition on U.S. 130 in Mansfield Township	27 N.J.R. 826(a)	R.1995 d.265	27 N.J.R. 2250(a)
16:31-1.37	Turn prohibitions along Route 70 in Cherry Hill	27 N.J.R. 643(b)	R.1995 d.222	27 N.J.R. 1809(c)
16:41B	Newspaper boxes on State highway right-of-way	27 N.J.R. 1157(a)	R.1995 d.314	27 N.J.R. 2433(a)
16:41D	Motorist service signing for non-urban Interstate and limited access highways	27 N.J.R. 1369(b)	R.1995 d.315	27 N.J.R. 2436(a)
16:43	Junkyards adjacent to the Interstate and national highway systems	27 N.J.R. 644(a)	R.1995 d.229	27 N.J.R. 1810(a)
16:50	Employer Trip Reduction Program	27 N.J.R. 827(a)	R.1995 d.338	27 N.J.R. 2436(b)

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17:1-2.10, 2.11, 2.12	Alternate Benefit Program: enrollment eligibility; transfers from another State retirement system	27 N.J.R. 469(b)	R.1995 d.215	27 N.J.R. 1811(a)
17:13	Goods and services contracts for small businesses and female and minority businesses	27 N.J.R. 52(a)	R.1995 d.224	27 N.J.R. 1811(b)
17:14	Minority and female contractor and subcontractor participation in State construction contracts	27 N.J.R. 54(a)	R.1995 d.225	27 N.J.R. 1814(a)
17:16-41.1	State Investment Council: Common Pension Fund A investments	27 N.J.R. 1767(a)		
17:16-41.1	State Investment Council: extension of comment period regarding Common Pension Fund A investments	27 N.J.R. 2110(b)		

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18:7-3.21	Corporation Business Tax: manufacturing equipment and employment investment credit	27 N.J.R. 838(a)		
18:7-3.22	Corporation Business Tax: new jobs investment credit	27 N.J.R. 840(a)		
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18:12A-1.6	Appeals to county boards of taxation	27 N.J.R. 1961(a)		
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19:18	Public Employment Relations Commission: contested employee transfer determinations	27 N.J.R. 847(a)	R.1995 d.316	27 N.J.R. 2454(a)
19:25-1.7, 9.2, 9.3, 10, 11	Candidacy contribution reporting and limits: change of public hearing date	27 N.J.R. 480(a)		
19:25-8.6, 8.9, 8.10, 8.12, 9.3, 9.4, 9.6	Filing of 48-hour notices by electronic facsimile transmission	27 N.J.R. 1161(a)	R.1995 d.253	27 N.J.R. 2010(a)
19:25-12	Reporting of expenditures; independent expenditures	27 N.J.R. 2110(c)		

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19:61-6.4	Executive Commission on Ethical Standards: attendance by State official at event sponsored by interested party	27 N.J.R. 1376(a)	R.1995 d.329	27 N.J.R. 2465(a)
19:75	South Jersey Transportation Authority: rules of operation	27 N.J.R. 2128(b)		

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19:40-1.2	Position endorsements; casino key employee and casino employee experience requirements	27 N.J.R. 1162(a)	R.1995 d.306	27 N.J.R. 2455(a)
19:40-1.2	Caribbean stud poker	27 N.J.R. 1767(b)		
19:40-1.2	Casino hotel facility requirements	27 N.J.R. 1775(a)		
19:40-1.2	Gaming chips and plaques	27 N.J.R. 1780(a)		
19:40-1.2	Patron credit and check procedures	27 N.J.R. 2113(a)		
19:40-2.6	Post-employment restrictions on Commission and Division of Gaming Enforcement employees	27 N.J.R. 1965(a)		
19:41	Applications for licensure	27 N.J.R. 647(a)	R.1995 d.242	27 N.J.R. 2011(a)
19:41-1.1, 1.2, 1.3	Casino employee licensure and registration	27 N.J.R. 2116(a)		
19:41-1.3	Keno	26 N.J.R. 2218(a)	R.1995 d.285	27 N.J.R. 2254(a)
19:41-1.5, 1.5A, 1.8, 1.9, 4.3, 5.2–5.5, 7.1A, 7.1B, 8.8, 9.15, 9.16	Position endorsements; casino key employee and casino employee experience requirements; casino hotel employee registration	27 N.J.R. 1162(a)	R.1995 d.306	27 N.J.R. 2455(a)
19:41-1.5A	Super Pan 9	27 N.J.R. 648(a)		
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19:41-5.15	Junket enterprise and casino service industry licensure: Business Entity Disclosure Form—Gaming	27 N.J.R. 1533(b)		
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19:41-7.1A, 9.11A, 14.3	Junket representative licensure	27 N.J.R. 1168(a)	R.1995 d.307	27 N.J.R. 2458(a)
19:41-9.8, 9.14, 14.1, 14.4, 14.6	License renewal terms of casino key employees and gaming-related casino service industries; gaming school employee licensure	27 N.J.R. 1171(a)	R.1995 d.282	27 N.J.R. 2251(a)
19:43-2.7A	Federal criminal record checks of casino employees and applicants	27 N.J.R. 319(a)		
19:43-3.1	Casino licensure: undue economic concentration	27 N.J.R. 1532(a)	R.1995 d.308	27 N.J.R. 2459(a)
19:43-6.2, 7.1, 7.3–7.7	Casino hotel facility requirements	27 N.J.R. 1775(a)		
19:43-9.4, 9.5	Employee experience; casino service employee registration	27 N.J.R. 1162(a)	R.1995 d.306	27 N.J.R. 2455(a)
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19:45-1.1, 1.1A, 1.2, 1.8, 1.10, 1.11, 1.12, 1.15, 1.19, 1.25, 1.33, 1.46–1.51	Keno	26 N.J.R. 2218(a)	R.1995 d.285	27 N.J.R. 2254(a)
19:45-1.1, 1.11, 1.12, 1.15, 1.20, 1.25, 1.39B, 1.52	Caribbean stud poker	27 N.J.R. 1767(b)		
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19:45-1.1, 1.15, 1.24–1.28	Patron credit and check procedures	27 N.J.R. 2113(a)		
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19:45-1.9B	Exclusion of match play coupons from cash complimentary limits	27 N.J.R. 848(a)	R.1995 d.254	27 N.J.R. 2011(b)
19:45-1.10	Surveillance employment restrictions	27 N.J.R. 654(a)	R.1995 d.231	27 N.J.R. 1815(a)
19:45-1.11, 1.12	Super Pan 9	27 N.J.R. 648(a)		
19:45-1.11, 1.12	Casino personnel requirements	27 N.J.R. 1162(a)	R.1995 d.306	27 N.J.R. 2455(a)
19:45-1.11, 1.12	Let It Ride poker	27 N.J.R. 2119(a)		
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19:45-1.37, 1.42, 1.44	Bill changer meters	27 N.J.R. 1789(a)		
19:45-1.45	Signature requirements	27 N.J.R. 1533(a)		
19:45-1.1–1.6	Gaming chips and plaques	27 N.J.R. 1780(a)		

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19:46-1.6, 1.13E, 1.20	Casino facility requirements	27 N.J.R. 1775(a)		
19:46-1.12	Baccarat-punto banco and minibaccarat tables; vigorish	27 N.J.R. 2126(a)		
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19:46-1.13H, 1.17, 1.18, 1.19	Let It Ride poker	27 N.J.R. 2119(a)		
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19:47-2.3, 2.18, 3.10, 6.5, 7.10	Minibaccarat and baccarat-punto banco: collecting and marking vigorish	27 N.J.R. 1174(a)	R.1995 d.309	27 N.J.R. 2461(a)
19:47-2.15	Blackjack irregularities: administrative correction	_____	_____	27 N.J.R. 2265(a)
19:47-2.15	Blackjack play irregularities	27 N.J.R. 2128(a)		
19:47-3.3, 7.3	Baccarat-punto banco and minibaccarat tables; vigorish	27 N.J.R. 2126(a)		
19:47-3.5, 4.4, 7.5	Baccarat-punto banco, baccarat-chemin de fer, minibaccarat: reshuffling option	27 N.J.R. 1176(a)		
19:47-13	Super Pan 9	27 N.J.R. 648(a)		
19:47-15	Keno	26 N.J.R. 2218(a)	R.1995 d.285	27 N.J.R. 2254(a)
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August 7 issue:
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September 5 issue:
Proposals ..... **August 7**
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